

1 IN THE COURT OF COMMON PLEAS

2 SUMMIT COUNTY, OHIO

3 - - - - - X

4 KAREN L. ARMOUR, etc., :
5 et al., : Judge Cosgrove
6 Plaintiffs, : Case No. 2002-07-4063
7 v. :
8 PATRICK RICH, D.O., :
9 et al., :
10 Defendants. :

11 - - - - - X

12 Washington, D.C.

13 Monday, January 12, 2004

14 Videoconference Deposition of DR. BRUCE
15 AMMERMAN, a witness herein, called for examination by
16 counsel for Plaintiff in the above-entitled matter,
17 pursuant to notice, the witness being duly sworn by
18 SUSAN L. CIMINELLI, a Notary Public in and for the
19 District of Columbia, taken at the offices of Kinko's
20 Copy Center, 2020 K Street, N.W., Washington, D.C.,
21 at 12:55 p.m., Monday, January 12, 2004, and the
22 proceedings being taken down by Stenotype by SUSAN L.
23 CIMINELLI, CRR, RPR, and transcribed under her
24 direction.

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiffs:</p> <p>4 HOWARD MISHKIND, ESQ.</p> <p>5 Becker & Mishkind</p> <p>6 1660 W 2nd Street</p> <p>7 Suite 660</p> <p>8 Cleveland, OH 44113-1419</p> <p>9 (216) 241-2600</p> <p>10</p> <p>11 On behalf of the Defendant Patrick Rich:</p> <p>12 PHILLIP A. KURI, ESQ.</p> <p>13 Reminger & Reminger</p> <p>14 200 Courtyard Square</p> <p>15 80 South Summit Street</p> <p>16 Akron, OH 44308</p> <p>17 (330) 375-1311</p> <p>18</p> <p>19 PATRICK J. MURPHY, ESQ.</p> <p>20 Bonezzi, Switzer, Murphy & Polito</p> <p>21 100 Leader Building</p> <p>22 Cleveland, OH 44114</p> <p>23 (216) 875-2767</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 Whereupon,</p> <p>3 DR. BRUCE AMMERMAN,</p> <p>4 business address at 3301 New Mexico Avenue, N.W.,</p> <p>5 Washington, D.C., was called as a witness by counsel</p> <p>6 for Plaintiff, and having been duly sworn by the</p> <p>7 Notary Public, was examined and testified as follows:</p> <p>8 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>9 BY MR. MISHKIND:</p> <p>10 Q. Would you please state your name for the</p> <p>11 record.</p> <p>12 A. Bruce Gorge, G-O-R-G-E, Ammerman.</p> <p>13 Q. Dr. Ammerman, my name is Howard Mishkind</p> <p>14 and I'm going to be asking you some questions today</p> <p>15 concerning the opinions that you have expressed in</p> <p>16 your report of August 11th and the opinions that you</p> <p>17 anticipate providing at the time of the trial of this</p> <p>18 case, which is set for the early part of March.</p> <p>19 Before I get into my questions, let me</p> <p>20 just indicate on the record that it's five minutes of</p> <p>21 one and that Mr. Murphy, who represents one of the</p> <p>22 co-defendants, has not shown up at this point. He</p> <p>23 was noticed. We are going to start with some of the</p> <p>24 preliminaries, Doctor, and then perhaps take a break,</p> <p>25 10, 15 minutes into the deposition and if he has not</p>
<p style="text-align: right;">Page 3</p> <p>1 CONTENTS</p> <p>2 WITNESS EXAMINATION BY COUNSEL FOR</p> <p>3 DR. BRUCE AMMERMAN PLAINTIFFS</p> <p>4 By Mr. Mishkind 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 AMMERMAN EXHIBIT NO. PAGE NO.</p> <p>10 1 Letter T.M. Bodo to Dr. B. Ammerman</p> <p>11 7/28/03 71</p> <p>12 2 Letter T.A. Gaffney to Dr. B. Ammerman</p> <p>13 10/15/03 71</p> <p>14 3 Letter T.A. Gaffney to Dr. B. Ammerman</p> <p>15 10/29/03 71</p> <p>16 4 Letter T.A. Gaffney to Dr. B. Ammerman</p> <p>17 11/4/03 71</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 shown up at that point, we'll make a call to his</p> <p>2 office to see whether somehow he is otherwise</p> <p>3 indisposed or planning on coming, okay?</p> <p>4 A. Okay.</p> <p>5 Q. Doctor, I have your report dated</p> <p>6 August 11, 2003 in front of me and it has your</p> <p>7 address on New Mexico Avenue in Washington, D.C., is</p> <p>8 that your, is that your only business address?</p> <p>9 A. Yes.</p> <p>10 Q. You don't have any other offices other</p> <p>11 than that office?</p> <p>12 A. No, sir.</p> <p>13 Q. I don't have your CV, although we are,</p> <p>14 Mr. Kuri is searching for a copy of it, but given</p> <p>15 that I don't have a CV right now, I'm going to ask</p> <p>16 some questions that might otherwise have been</p> <p>17 answered by a copy of that, but you are a</p> <p>18 neurosurgeon, as I understand it, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. If I had a CV in front of me, would it set</p> <p>21 forth your publications that you have been involved</p> <p>22 in?</p> <p>23 A. Yes.</p> <p>24 Q. Is your CV thick? Can you tell me how</p> <p>25 many articles or book chapters or books you have</p>

Page 6	Page 8
<p>1 written?</p> <p>2 A. I think there are eight or nine</p> <p>3 publications.</p> <p>4 Q. Any book chapters or are they all journal</p> <p>5 articles?</p> <p>6 A. No. There is a book chapter on a</p> <p>7 microneurosurgical text many years ago. The others</p> <p>8 are going to be articles.</p> <p>9 Q. Are they all peer reviewed articles,</p> <p>10 Doctor?</p> <p>11 A. I believe so.</p> <p>12 Q. Do any of those articles touch on the</p> <p>13 topic of causation in terms of causation of stroke in</p> <p>14 a patient?</p> <p>15 A. At least one deals with treatment of</p> <p>16 aneurism, which is quasi-related but not, I have</p> <p>17 written nothing that deals specifically with the</p> <p>18 issues at hand as I envision them here.</p> <p>19 Q. Beside the article on aneurism, the other</p> <p>20 articles would be very simply put unrelated to the</p> <p>21 medical subject matter in this case?</p> <p>22 A. I think so. I don't have it in front of</p> <p>23 me, but I think that's correct.</p> <p>24 Q. You probably know it by memory better than</p> <p>25 I do, though.</p>	<p>1 operate when we are done with this today.</p> <p>2 I also spend time at George Washington</p> <p>3 University Hospital, where I'll be tomorrow, and</p> <p>4 where I also operate and teach, and it's those three</p> <p>5 places I spend just about almost all my time.</p> <p>6 Q. What percentage of your practice, if you</p> <p>7 can tell me, involves the management of stroke</p> <p>8 patients?</p> <p>9 A. Currently I suspect it's certainly less</p> <p>10 than 10 percent, and as far as the actual management,</p> <p>11 less than 10 percent.</p> <p>12 Q. Do you see patients in follow up for</p> <p>13 non-neurosurgical issues?</p> <p>14 A. Well, I look upon neurology as part of</p> <p>15 neurosurgery and I treat patients who certainly have</p> <p>16 no surgical issues or indications. In fact, many.</p> <p>17 So I evaluate and treat patients both as a</p> <p>18 neurosurgeon and someone who may need neurosurgical</p> <p>19 services but also patients who have neurologic</p> <p>20 problems, vascular disease, seizures, other things,</p> <p>21 neuropathies, other things that don't require</p> <p>22 surgery.</p> <p>23 Q. What percentage of your patient</p> <p>24 population, if you will, involve nonsurgical</p> <p>25 management, as opposed to surgical issues with follow</p>
Page 7	Page 9
<p>1 A. A bit.</p> <p>2 Q. All right. Have you reviewed any</p> <p>3 literature at all in preparing yourself either to</p> <p>4 write your letter of August 11th or in connection</p> <p>5 with the opinions that you hold in this case?</p> <p>6 A. No, sir.</p> <p>7 Q. Are there any journal articles, books,</p> <p>8 book chapters that you believe to be relevant to the</p> <p>9 issue of causation that would support any of the</p> <p>10 opinions that you hold or authors that you could cite</p> <p>11 me to that you believe have written on the topic that</p> <p>12 would support the opinions that you hold in this</p> <p>13 case?</p> <p>14 A. No, sir.</p> <p>15 Q. Tell me briefly if you would about your</p> <p>16 practice. All I know is that you are a neurosurgeon</p> <p>17 but I'd like to know what your day-to-day practice</p> <p>18 consists of, please?</p> <p>19 A. I'll be glad to. I practice basically</p> <p>20 adult neurosurgery. I see occasional kids but I</p> <p>21 really don't operate on little kids. I spend my time</p> <p>22 either at the office as I did this morning before</p> <p>23 driving downtown here, or at Sibley Hospital, which</p> <p>24 is a community hospital here in Washington, D.C.,</p> <p>25 where I made rounds this morning, where I'm going to</p>	<p>1 up by you after the surgery?</p> <p>2 A. I can only answer it this way. Most</p> <p>3 patients I see don't get operated on. I probably</p> <p>4 operate typically three or four times a week, but I</p> <p>5 probably end up seeing, gosh, probably 50 patients a</p> <p>6 week, counting new patients and old patients. Of</p> <p>7 course, that could be seen a number of times but the</p> <p>8 vast majority of patients I see don't require</p> <p>9 cervical intervention.</p> <p>10 Q. How do you typically get your patients?</p> <p>11 Are they referred from a particular subspecialist?</p> <p>12 A. It varies. I would say probably, and I</p> <p>13 don't know how, one versus the other, the most common</p> <p>14 would either be from internist/family practitioners</p> <p>15 and orthopedic surgeons. That would probably be the</p> <p>16 two most frequent. And then a variety of other</p> <p>17 professionals, be it neurologists, be it, just one</p> <p>18 second, we have rheumatologists, geriatricians,</p> <p>19 whatever. But internists, family practice</p> <p>20 physicians, and orthopedist would probably be at the</p> <p>21 head of the list.</p> <p>22 Q. What would be a typical circumstance where</p> <p>23 a neurologist would refer a patient to you, as</p> <p>24 opposed to the neurologist continuing to treat and</p> <p>25 manage that patient?</p>

Page 10	Page 12
<p>1 A. In a couple of contexts. Obviously if he 2 or she feels the patient may require surgery or some 3 type of surgical evaluation, that would be the most 4 frequent and not infrequently for sort of a second 5 opinion to get another opinion. Those are probably 6 the two most common.</p> <p>7 Q. Are you board certified in neurology? 8 A. No, sir. I'm board certified in 9 neurological surgery of which one third of our oral 10 board is neurology.</p> <p>11 Q. The board that you were certified by is 12 called what? 13 A. The American Board of Neurological 14 Surgery.</p> <p>15 Q. Are you board certified in any other 16 subspecialties? 17 A. No, sir.</p> <p>18 Q. There is a little bit of a delay, Doctor, 19 on the, at least on the video. When you were talking 20 before, at least the video that I saw you were 21 drinking your Sprite. Are you having the same thing 22 with us from our end? 23 A. Yes, sir. That's why I'm intentionally 24 trying to delay. I'm not being impolite. There is a 25 delay for each of us.</p>	<p>1 less than 10 percent of the patients I see. Now, I 2 see patients who have cerebral vascular disease who 3 have not had strokes and sometimes it's a little hard 4 to separate it out but seeing this problem has been 5 an ongoing part of my practice and certainly for the 6 first 10 or 15 years, I saw lots and lots and lots of 7 stroke patients, more than we do now as we have 8 gotten more neurologists on staff at the hospital.</p> <p>9 Q. Can a pulmonary embolism precipitate or 10 cause a patient to experience a cerebral vascular 11 accident? 12 A. If a pulmonary, the answer is yes. If it 13 leads to such a degree of hypotension, it will cause 14 anoxia. The answer is yes.</p> <p>15 Q. Before we talk about the details of 16 Mrs. Speicher's case, I want to ask you first about 17 your medical, legal experience and then get a sense 18 of what it is that you have in front of you and then 19 we'll try to dive right into the opinions that I 20 believe you will be providing in this case, okay? 21 A. Okay. Do you have something banging 22 behind you? 23 MR. KURI: Yes. It's the heater. 24 BY MR. MISHKIND: 25 Q. Yes. They got one of those old heaters</p>
Page 11	Page 13
<p>1 MR. KURI: Your picture is actually 2 extremely delayed, but your voice seems to be coming 3 through. It's really strange right now.</p> <p>4 MR. MISHKIND: You are like moving in slow 5 motion, so I'll do my best as well to pause and I'm 6 not intentionally doing that, just so that we don't 7 overlap each other.</p> <p>8 THE WITNESS: No problem. You guys are 9 also in slow motion.</p> <p>10 BY MR. MISHKIND: 11 Q. Sometimes figuratively, other times 12 literally. 13 A. No comment. Go ahead.</p> <p>14 Q. Okay. Do you hold yourself out as an 15 expert in the area of pulmonary medicine? 16 A. No, sir.</p> <p>17 Q. When is the last time, Doctor, that you 18 diagnosed and treated a patient with a stroke that 19 did not require surgical intervention? 20 A. Well, I'm sure within the last several 21 weeks. Most patients I see who have strokes do not 22 require surgical intervention.</p> <p>23 Q. And what percentage of your patient 24 population that you see are stroke patients? 25 A. Again, as I said, it would probably be</p>	<p>1 that unless Mr. Kuri is trying to manipulate it now 2 to see if it helps, but --</p> <p>3 MR. KURI: I can't get into it. 4 THE WITNESS: Don't try. 5 BY MR. MISHKIND: 6 Q. You have given deposition testimony 7 before, correct? 8 A. Yes, sir.</p> <p>9 Q. Have you testified in federal court, as 10 well as in state court? 11 A. Yes.</p> <p>12 Q. We are now very early into 2004, so have 13 you given any deposition or trial testimony in the 14 calendar year 2004 prior to today? 15 A. I'm pretty sure I gave a deposition last 16 week. And I know I did in December.</p> <p>17 Q. The deposition last week, where was that 18 case, the medical subject matter? Was it a case in 19 Ohio or elsewhere? 20 A. Oh, it was, no. It was, gave the 21 deposition in my office. I don't recall what it was 22 about. I just recall that last week there was a 23 deposition. I'd have to go back. I don't recall the 24 details of it. Where was the case? You mean, where 25 was the case filed?</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. You gave a deposition in the case in your 2 office last week, but the malpractice or the alleged 3 malpractice occurred in what state? 4 A. I don't even recall if it was a 5 malpractice case. You just asked me about 6 depositions. I give infrequent malpractice case 7 depositions. If that's what you are asking me, I 8 know I gave one in December. I don't recall what the 9 one was last week. I'm not sure that that was. 10 Q. How many times have you been deposed in 11 medical malpractice cases? 12 A. I would guesstimate probably two, three 13 dozen, in that ballpark. 14 Q. The one a week ago, was that a medical 15 malpractice case? 16 A. I do not recall. I do not recall. I 17 don't recall. 18 Q. Do you remember the name of the attorney 19 that you were serving at the request of? 20 A. I do not. If I did, then I might remember 21 the case. I can't tell you. 22 Q. You don't remember the medical subject 23 matter of the case from last week either? 24 A. If I did, I'd be pleased to share it with 25 you.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Of the two to three dozen medical 2 malpractice matters that you indicated, those are 3 ones that you have given deposition testimony in, is 4 that correct? 5 A. Yes, sir. Over the years. Yes. 6 Q. Tell me of the two to three dozen medical 7 malpractice cases, how many of those have been where 8 you were serving as the plaintiff's expert and how 9 many where you were serving as the defense expert? 10 A. My best guesstimate, it probably breaks 11 down to be 20-80, 70-30 plaintiff's, defense. 12 Q. Has that been fairly consistent since you 13 have been doing review in medical malpractice cases? 14 A. My sense is over the last few years, yes. 15 Prior to that, my sense is the numbers would be 16 higher for the defense than the plaintiff. In other 17 words, greater. Greater than 80 percent defense, 18 which is probably no longer the case. 19 Q. Now it's more like what two-thirds to 70 20 percent defense, with the balance being plaintiff? 21 A. Yes. And actual testimony is probably 22 about, and I'm guessing, but my guess is it's about 23 70-30, 75-25. 10 years ago, the numbers might have 24 been more towards the defense side than they are 25 currently.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. In December, was that a medical 2 malpractice case that you testified in? 3 A. Yes. That one I do recall. 4 Q. What were you testifying on behalf, the 5 defense or on behalf of the plaintiff in that case? 6 A. In the December case was the plaintiff. 7 Q. Who was the plaintiff's attorney? 8 A. It was a lady in Virginia. Her last name 9 was I believe Cofield, Judy Cofield. 10 Q. I'm sorry. Her first name was? 11 A. I believe it was Judith or Judy. 12 Q. And was that a trial or just deposition? 13 A. I gave a video deposition because the 14 trial was coming up right after the holiday, and I 15 wasn't available, so it was a video in my office. 16 Q. And you had been deposed in a discovery 17 deposition in that case before your video was 18 conducted? 19 A. I think so. I'm not positive. 20 Q. Do you remember what the medical subject 21 matter in that case was? 22 A. That one I do. That was a patient who had 23 had a revision of a cervical fusion, and had a plate 24 put in and the plate was put in improperly. And she 25 required additional surgery subsequently.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. How many cases in the medical malpractice 2 area do you review on a yearly basis? 3 A. My guesstimate is it's probably around a 4 dozen cases a year, give or take I'm asked to look 5 at. 6 Q. Tell me the percentage breakdown plaintiff 7 versus defense on those cases that you reviewed per 8 year? 9 A. It's probably pretty close to even, maybe 10 a shade more towards the plaintiff's side that I'll 11 be asked to look at. 12 Q. You indicated that you testified in 13 federal court so you have been required, I presume, 14 to prepare a Rule 26 disclosure in terms of 15 deposition and trial testimony, correct? 16 A. You asked me something I can't answer. 17 There is a list which is probably about a year or so 18 old of depositions and trials which I have given up 19 to that point. The answer is yes. I don't know what 20 you are calling it, but if that's what it is, the 21 answer is yes. 22 Q. And you say it's about a-year-old so it 23 would have been through the year 2002? 24 A. It's into 2002. Yes, sir. 25 Q. Do you know whether you prepared any type</p>

Page 18	Page 20
<p>1 of a list, partial or complete, for the year 2003?</p> <p>2 A. I know I haven't done it. I'm the one</p> <p>3 that does it and it has not been done. I haven't</p> <p>4 done it.</p> <p>5 Q. All right. Just so I'm clear, the last</p> <p>6 list whether it's partial or complete would relate to</p> <p>7 the year 2002, is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. You have not sat down either on your own</p> <p>10 urging or at the urging of someone else and prepared</p> <p>11 a list of cases in 2003 that you testified in</p> <p>12 deposition or trial?</p> <p>13 A. I haven't gotten around to it. The answer</p> <p>14 is I have not.</p> <p>15 Q. How many years have you been doing medical</p> <p>16 legal work, whether it's medical malpractice or any</p> <p>17 other type of medical legal work?</p> <p>18 A. If you are including things like Workmens'</p> <p>19 Comp evaluations, that sort of thing, probably</p> <p>20 greater than 20 years.</p> <p>21 Q. Do you also perform examinations where a</p> <p>22 patient is being sent to you for purposes of a</p> <p>23 one-time exam which may be referred to as an</p> <p>24 independent medical exam or a defense medical exam?</p> <p>25 A. With the exception of the word defense, I</p>	<p>1 or ten years ago. I must say nothing comes to mind,</p> <p>2 but I don't know how to answer the question beyond</p> <p>3 that.</p> <p>4 Q. To the best of your recollection, the</p> <p>5 answer would be no?</p> <p>6 A. To the best of my recollection, it's I</p> <p>7 don't know. I don't think so, but I don't know.</p> <p>8 Q. Same thing with regard to testimony in</p> <p>9 deposition or at trial. Have there been cases where</p> <p>10 you have provided testimony as to the cause of a</p> <p>11 patient's stroke?</p> <p>12 A. Hold one second. Could we go off.</p> <p>13 Q. Sure.</p> <p>14 (Recess.)</p> <p>15 MR. MISHKIND: Mr. Kuri is calling</p> <p>16 Mr. Murphy to see if he is coming.</p> <p>17 BY MR. MISHKIND:</p> <p>18 Q. Doctor, have you ever testified to your</p> <p>19 knowledge in a case involving a pulmonary embolism</p> <p>20 where the issue was whether the pulmonary embolism</p> <p>21 caused or contributed to a cerebral vascular</p> <p>22 accident?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Have you reviewed any cases in the past</p> <p>25 for Mr. Kuri?</p>
Page 19	Page 21
<p>1 would say yes because I have an open door policy in</p> <p>2 my office that I do evaluate patients, probably</p> <p>3 three, four, five times a week out of the 50 or so I</p> <p>4 see that are patients I don't treat and probably the</p> <p>5 majority come from defense lawyers but I see them for</p> <p>6 plaintiffs' lawyers, I see them for Social Security.</p> <p>7 I see them for Workmen's Comp, things of this nature</p> <p>8 that I don't treat that are really runs the gamut</p> <p>9 throughout all of those.</p> <p>10 Q. What percentage of your income would you</p> <p>11 say is generated from doing medical malpractice</p> <p>12 reviews, depositions, and testimony, as well as the</p> <p>13 other gamut where you are seeing patients that come</p> <p>14 to you that you are not treating that come to you</p> <p>15 either through Social Security from a defense lawyer</p> <p>16 or another lawyer?</p> <p>17 A. I would guesstimate 10 percentish in that</p> <p>18 ballpark.</p> <p>19 Q. Have you ever authored a report in a</p> <p>20 medical malpractice case other an the Speicher case</p> <p>21 where you were providing opinions as to the causation</p> <p>22 of a stroke in a patient?</p> <p>23 A. I wouldn't know how to answer the question</p> <p>24 because I quite candidly would not have a</p> <p>25 recollection of something I might have written five</p>	<p>1 A. I believe I have had at least one other</p> <p>2 case with him. Yes.</p> <p>3 Q. Is that an open case, to your knowledge,</p> <p>4 one that you are still involved in?</p> <p>5 A. I don't believe so.</p> <p>6 Q. What was the medical subject matter of</p> <p>7 that case?</p> <p>8 A. I don't recall. I need the patient's name</p> <p>9 and the file.</p> <p>10 Q. Was your deposition taken in that case, if</p> <p>11 you recall?</p> <p>12 A. I don't recall. I believe I did testify,</p> <p>13 but I don't recall if my deposition was taken.</p> <p>14 Q. You believe you testified at trial in the</p> <p>15 case?</p> <p>16 A. It was either trial or deposition and I'm</p> <p>17 trying to sort it all out and I don't recall. I know</p> <p>18 I did give testimony. Beyond that, I don't recall</p> <p>19 specifically.</p> <p>20 Q. When are you scheduled next to testify in</p> <p>21 deposition after today?</p> <p>22 A. In a malpractice case, I have no idea.</p> <p>23 Q. In any case?</p> <p>24 A. Oh, I think later this week, I think later</p> <p>25 this week I have a deposition, I believe Wednesday or</p>

<p style="text-align: right;">Page 22</p> <p>1 Thursday, I think it's a patient of my own but I know 2 I have one later this week, patient I treated, I 3 believe, but it's not a malpractice case. 4 Q. Do you know when you are next scheduled to 5 testify in a malpractice case either at deposition or 6 at trial? 7 A. No, sir. Actually, I do. That's not 8 correct. That is not correct. I have a deposition 9 coming up later in the month because I saw the file 10 on my desk, but it's later in the month. 11 Q. Any chance that you might remember at this 12 point the subject matter of that case? 13 A. I remember -- yes. Actually I do because 14 I looked at it not too long ago. It's a patient who 15 had an AVM who hemorrhaged and died. 16 Q. Are you serving as expert for the 17 plaintiff or defendant in that case? 18 A. I'm a causation expert for the plaintiff 19 in that case. 20 Q. Who's the plaintiff's lawyer in that case? 21 A. It's the Feiger firm in Detroit, and I 22 don't recall the gentleman's name. It begins with a 23 W. I'd have to see the file to give you more than 24 that. 25 Q. You have done other cases on behalf of</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I have worked with him, but I don't 2 believe that that, I may have the wrong firm, but I 3 don't believe so. 4 Q. Tell me to the best of your recollection 5 how many cases you have reviewed over the years for 6 the Reminger & Reminger firm? 7 A. I would guesstimate about a half a dozen 8 over the years, in that ballpark. 9 Q. And of those half a dozen cases that you 10 have reviewed for them, have you been deposed in all 11 of those cases? 12 A. No idea. 13 Q. Are you able to tell me whether you have 14 been deposed in most of those half a dozen cases? 15 A. My sense would be probably yes but again 16 without a name and a file, I'm sort of guessing a 17 little bit, which I hate to do. 18 Q. What about other law firms in the 19 Cleveland area. Have you had occasion to work with 20 other lawyers that aren't affiliated with 21 Reminger & Reminger? 22 A. There is another firm. The answer was 23 yes. That's why I say I don't recall the specifics 24 of when I was there. The answer is yes, but again 25 I'd have to have a name and if it's someone I know</p>
<p style="text-align: right;">Page 23</p> <p>1 lawyers for the Reminger & Reminger firm, is that 2 correct? 3 A. Yes, sir. 4 Q. Do you remember working for attorney Tom 5 Kilbane? 6 A. Yes. 7 Q. Do you know how many cases you reviewed 8 for Mr. Kilbane? 9 A. I do not. 10 Q. Do you remember the names of any other 11 attorneys of Reminger & Reminger that you have worked 12 with? 13 A. If you give me a name I can tell you. I 14 really don't keep a mental list. 15 Q. You are not able to recollect names, and 16 I'm not faulting you, but let me make it come from a 17 different way. 18 Do you remember when the last time it was 19 you either testified at deposition or at trial for, 20 at the request of a Reminger & Reminger attorney? 21 A. It was last year, I'm pretty sure. It was 22 in Cleveland. I don't recall the details, though, 23 but I'm almost positive it was the last half of last 24 year. Yes. 25 Q. Was that for attorney Mark Groedel?</p>	<p style="text-align: right;">Page 25</p> <p>1 that I could tell you. 2 Q. You believe it's just one other firm that 3 you have worked with in Cleveland? 4 A. I don't know. I don't know. I don't tend 5 to think of it in terms of the makeup of a firm. If 6 I hear a name and it's someone I have worked with, 7 then I'll know who it is. 8 Q. What about the name of Dirk Reimensneider? 9 A. Yes. 10 Q. Does that ring a bell? 11 A. It sure does. 12 Q. Have you worked with Mr. Reimensneider as 13 an expert on behalf of clients of his? 14 A. I have, on a couple of occasions. 15 Q. The name of the firm is Buckingham 16 Doolittle, does that bring a bell? 17 A. Yes, it does. Thank you. 18 Q. You are welcome. I try to help out every 19 once in a while. 20 A. I appreciate it. 21 Q. Any other firms or individuals from the 22 defense side that you recall working with other than 23 the two that I just referenced? 24 A. There is one other, but it escapes me and 25 again I'd have to know the individual's name. I know</p>

Page 26	Page 28
<p>1 there is another fella I was involved with. I didn't 2 actually testify. I don't think I did. No. I did 3 not. But it was not, I don't think it was from that 4 firm. 5 Q. Have you ever had your privileges 6 suspended or revoked at any time? 7 A. No, sir. 8 Q. Have you ever been the subject of any 9 disciplinary action before any state or local medical 10 association? 11 A. No, sir. 12 Q. Have you ever been the party to any 13 medical malpractice cases? 14 A. Yes, sir. 15 Q. On how many occasions, sir? 16 A. Four. 17 Q. Are any of those cases still active? 18 A. One. 19 Q. Are they all in the Washington, D.C. area? 20 A. Yes. 21 Q. Have any of those cases, the current one 22 or the previous three, did any of those cases involve 23 any issues surrounding the cause of a stroke in a 24 patient? 25 A. No, sir. Not even close.</p>	<p>1 Could it be 8 percent or 15 percent or 12 percent, I 2 don't know. But I don't think there has been radical 3 changes over the last few years, no. 4 Q. Have you received any K-1s or 1099s thus 5 far from any of your medical legal work for the year 6 2003? 7 A. I have no idea. They wouldn't come 8 directly to me. 9 Q. Where would they go to? 10 A. They would go to the office. They would 11 go to my bookkeeper and I can tell you we don't keep 12 them because my accountant says they don't need to. 13 Do they come in? I'm assuming they do. I 14 occasionally see these things come in, but beyond 15 that, it's nothing that we really have. 16 Q. You mentioned something curious. Your 17 accountant says that you don't need to keep them. Do 18 you understand why that is that you don't need to 19 keep them? 20 A. Yes. I asked him years ago. You get a 21 whole pile of stuff from insurance companies and 22 other places and I asked him is this something we 23 need to save and he says basically knows, I enter it 24 in or when my dad was alive, goes into the 25 corporation. I said fine, so we don't.</p>
Page 27	Page 29
<p>1 Q. You never worked at the request of anyone 2 from Becker & Mishkind on any cases, have you? 3 A. I don't think so. I don't think so. I 4 don't know. I don't think so. 5 Q. Do you remember testifying as an expert 6 for the defense in a case by the name of Tina Suppa? 7 A. Sure. I mean, I remember that name. Yes. 8 Q. And do you remember which law firm you 9 were working for in that case? 10 A. I don't, but the name I know I have seen 11 before, so the answer is yes to that but I don't 12 recall who the individual was. 13 Q. Do you know for the calendar year 2003 14 what your income was from medical legal work? 15 A. Are you including patients I have operated 16 on and then testified for, my own patients or 17 patients who have not been my own patients? 18 Q. Patients that have not been your own. 19 A. I would guesstimate lumping it together 20 probably in that 10 percentish of my total and 21 leaving my own patients out of it. 22 Q. And has it pretty much been 10 percent 23 over the course of the years? 24 A. Well, I think it's, well, I'm sure it 25 varies year to year and I'm giving you an estimate.</p>	<p>1 Q. You know, this issue has come up before 2 concerning income that you have received, for 3 example, from Allstate Insurance Company. It's come 4 up in several depositions that you have given where 5 you were paid over \$100,000 in 1999 from Allstate 6 Insurance Company. I think you were uncertain as to 7 whether or not that was all for independent work or 8 whether it included payments on patients of your own. 9 Do you recall that? 10 A. Yes, sir. 11 Q. Do you continue to receive income or 12 payments from Allstate Insurance Company for patients 13 both that you see that are not your own, as well as 14 some of your own patients? 15 A. I can't give a specific answer. My sense 16 is yes. I don't think my practice is vastly 17 different. I see patients for evaluation. It would 18 not really be from Allstate, it would be an attorney 19 and I simply treat patients who they get the bill and 20 they pay me for medical services or surgery, so it's 21 for both. 22 Q. Who is Harvey Ammerman? 23 A. He was my father. I practiced with him 24 until he passed away in '93. 25 Q. Who is James Watts?</p>

Page 30	Page 32
<p>1 A. Dr. Watts, who has also passed away, was 2 our first chairman at George Washington University, 3 and after he retired, he worked with us in an office 4 setting until he died several years ago. 5 Q. Your letter to Mr. Kuri is dated 6 August 11th, 2003. It just has your name on it. How 7 long have you been solo in Washington Neurosurgical 8 Associates? 9 A. Well, I have been actually been solo in 10 reality since March of '93, when my father passed 11 away. When they changed the letterhead, I can't tell 12 you, that is to just leave my name. 13 Q. Have you had any other doctors that have 14 been affiliated with Washington Neurosurgical 15 Associates other than your dad and Dr. Watts? 16 A. Not in the last 10 years. We did before 17 that, but not certainly in the last 10 or 15 years. 18 Q. Do you provide your name through any 19 services that hook lawyers up to doctors for expert 20 review? 21 A. No, sir. I don't -- I have no 22 affiliations with anybody. 23 Q. Have you ever advertised your availability 24 to provide expert services? 25 A. No, sir.</p>	<p>1 A. Just defense attorneys? 2 Q. Yes. 3 A. I would guesstimate probably two, three a 4 week. 5 Q. You also do Social Security exams, did you 6 say? 7 A. Occasionally see Social Security. More 8 commonly than that would be Workmen's Compensation 9 and probably less commonly would be plaintiffs' 10 lawyers who send in to a patient who want a 11 neurological treatment who I don't treat. 12 Q. What about workers comp exams where you 13 are seeing the patient that it's not your patient, 14 but you are being sent the patient to examine by the 15 Industrial Commission, the employer's side of the 16 table, if you will? 17 A. Boy, that's a toughy. I see patients for 18 Workmen's Comp sent in sometimes by lawyers, 19 sometimes by the Commission. I'm talking about ones 20 that I don't treat or operate on. Occasionally just 21 for an evaluation from their attorney because they 22 need a status as to how the patient is doing, but I'm 23 going to guess maybe it comes out to once a week kind 24 of thing, in that ballpark, and that's a guess. 25 Q. Doctor, you have in front of you material</p>
Page 31	Page 33
<p>1 Q. Tell me how much you charge, Doctor, for 2 review of medical records? 3 A. \$300 per hour. 4 Q. How much do you charge for deposition 5 testimony? 6 A. It's \$500 for the first hour. If we go 7 into a second hour, I'll charge \$300 and to be up 8 front on this, I'm charging an extra hour because 9 it's an extra half-hour to come downtown to do this. 10 Q. How much do you charge for being out of 11 the city, how much will you be charging when you come 12 to Cleveland, which I presume will involve an entire 13 day away from your practice? 14 A. \$5,000 plus any unusual expenses. 15 Q. That being hotel, as well as air fare and 16 meals? 17 A. Exactly. 18 Q. I was wondering what you meant by unusual 19 expenses. 20 A. Ones I normally don't have to pay for here 21 in town. Certainly not the hotel portion and the air 22 fare. 23 Q. The exams that you do on patients that are 24 not your own that are sent to you by other defense 25 attorneys, how many of those do you average a week?</p>	<p>1 which I presume relates to the Speicher case? 2 A. Yes, sir. 3 Q. Your letter of August 11 of 2003 indicated 4 that you had been forwarded medical records, as well 5 as the reports of Drs. Conomy, Bibler and Bacik. 6 Was that all of the material that you had 7 as of August 11th that you reviewed to arrive at the 8 opinions expressed in your report? 9 A. I believe so. 10 Q. And it looks like you have a black binder 11 in front of you with, are those the medical records? 12 A. Yes, sir. 13 Q. Tell me what hospital or hospitals those 14 medical records are from? 15 A. I have records from Akron General, 16 Barberton Citizens. I also have medical records of 17 Dr. Rich, and medical expenses. That's what's 18 contained in this volume. 19 Q. Do you have tabs on any of those pages? 20 A. I got lots of tabs on pages. So I can 21 find records. 22 Q. Did you place those tabs? I'm sorry. 23 A. I said so I can find records. I placed 24 all the tabs. 25 Q. Are there any notes on any of the tabs?</p>

Page 34	Page 36
<p>1 A. Well, the answer is yes. I wrote cranial 2 CT 2601 so I can find it. I wrote myself a sticky. 3 That kind of thing. But there is nothing in the way 4 of specific notes. I mean I may have written a word 5 or two. I'd have to go back and look. It's mostly 6 tabs or underlining or highlighting specific entries. 7 Q. Doctor, Mr. Murphy has just arrived. By 8 the way, I failed to ask whether you have ever had 9 the occasion to review cases on behalf of Mr. Murphy 10 or any of his partners at Bonezzi, Switzer and 11 Polito. 12 A. Thank you. That was the firm. The answer 13 is yes. 14 Q. Did you have the pleasure of working with 15 Mr. Murphy or someone else from that firm? 16 A. I believe it was someone else. 17 Q. Do you remember which lawyer it was in 18 terms of the names that I gave you? 19 A. I think, give me the names again, please. 20 Q. Bonezzi, Switzer, Murphy, Polito? 21 A. Yes. 22 Q. No? Yes? 23 A. No, yes, no, yes. 24 Q. Mr. Switzer? 25 A. Yes.</p>	<p>1 don't see in my file. I don't recall. I know I got 2 their reports. 3 Q. Do you have all of your correspondence 4 from Mr. Kuri with you today? 5 A. I think so. I hope so. 6 Q. Is there anything that you have removed 7 from the file by way of correspondence or letters or 8 anything relating to this case? 9 A. No. 10 Q. Have you received any deposition 11 summaries? 12 A. I'm sorry. Deposition summaries? 13 Q. Summaries of any depositions? 14 A. No. 15 Q. Yes, sir. 16 A. I have not. 17 Q. What about any timelines, timelines or 18 summaries of the medical records? 19 A. No. Other than what some of the doctors 20 have within their reports or in the depositions. 21 Q. Have you been provided with any medical 22 literature by Mr. Kuri that you believe to be 23 relevant to this case? 24 A. No, sir. 25 Q. Rather than taking the time to have you</p>
Page 35	Page 37
<p>1 Q. Okay. Do you know how many cases you had 2 occasion to review for the Bonezzi Switzer law firm? 3 A. I can think of two. There may be a third 4 over the course of a number of years. 5 Q. Do you know whether any of those cases are 6 active cases, as far as your understanding? 7 A. I can only think of -- 8 Q. You were still involved as an expert on? 9 A. Yes. I believe one. 10 Q. Do you recall the subject matter on that 11 case, by chance? 12 A. I do not. 13 Q. Since your report, Doctor, have you 14 received any additional information from Mr. Kuri? 15 A. The answer is I believe so. I received 16 the films, I believe in October of this year. I'm 17 sorry, '03, the CT. And I received copies of 18 depositions of Drs. Bibler, Bacik and Conomy. And I 19 think that's about it. 20 Q. Have you seen reports from Dr. Herwig or 21 Dr. Martin? 22 A. Yes. 23 Q. Have you seen depositions from Dr. Herwig 24 and Dr. Martin? 25 A. I don't recall. I was looking before. I</p>	<p>1 read me all of the letters, just first tell me when 2 it was that you were first consulted and look at 3 Mr. Kuri's letter, if that helps you. 4 A. July 28, '03. It's very brief. I don't 5 mind reading it to you because it is so brief. 6 Q. Go ahead. 7 A. This correspondence, it's very brief. 8 This correspondence will serve to confirm that you 9 have graciously consented to review the above 10 captioned matter on behalf of our client, Dr. Patrick 11 Rich. We request your Frank and candid opinion with 12 regard to the appropriateness of care rendered by our 13 client. 14 Briefly, by way of background, plaintiff 15 alleges that Dr. Rich failed to properly work up the 16 decedent, M. Jean Speicher and perform the necessary 17 testing to rule out pulmonary embolism which resulted 18 in death and forwarded the medical records that you 19 and I just talked about and then asked me to call, 20 which I guess I did. 21 Q. Do you have any written notes at all? You 22 told me that you had a sticky for the CT of October, 23 but do you have any handwritten notes or anything 24 else that you have compiled? 25 A. The only note I was looking when you asked</p>

Page 38	Page 40
<p>1 me before, I came across, what I did make a note in 2 the October 29, '03 cover letter where they sent me 3 the films, the CT of the head. I have a one-sentence 4 note that says large infarct left MCA distribution 5 acute. 6 Q. Any other notes? 7 A. Well, I was flipping through. Other than 8 one that says prior note where I must have asked for 9 the CT, it says will send CT and they did, a week 10 later. If there is a word, I have missed it, but 11 basically no, it's highlighting and underlining and 12 putting a tab on it. 13 Q. Doctor, in that letter from Mr. Kuri, 14 July 28th letter, he asked you to comment on the 15 appropriateness of the care provided by his client, 16 Dr. Patrick Rich, correct? 17 A. Yes, sir. 18 Q. Your report that you wrote on 19 August 11, 2003 does not comment on anything relating 20 to whether Dr. Rich provided acceptable or 21 appropriate care to Mrs. Speicher. Am I reading your 22 report correctly? 23 A. Correct. After I reviewed all the 24 records, it was clear to me that my role and my 25 expertise was in the neurologic condition she</p>	<p>1 A. Yes, sir. 2 Q. Doctor, I have now been handed by Mr. Kuri 3 a copy of your CV. It has under the publications 4 eight publications, the last being in 1988. Would 5 there be a more current? 6 A. There is a more current CV then. Because 7 I had one last year. 8 Q. If you would be so kind as to forward a 9 current CV to Mr. Kuri at sometime in the next week 10 or so, so that we all have an updated one, because 11 the one that we have is four pages with the article 12 on pain management, the symposium from Sibley 13 Memorial Hospital is the last one on your list of 14 publications. 15 A. I would ask that someone call my office, 16 you can or Mr. Kuri's office. I don't want to take 17 that responsibility and forget or be neglectful. We 18 are pleased to get you one. 19 MR. KURI: I'll take care of it. 20 BY MR. MISHKIND: 21 Q. All right. What I'd also like to do at 22 the end of the deposition rather than taking the time 23 now because I know you have got surgery to do, 24 Mr. Kuri has a deposition, what I'd like to do is to 25 get, mark as exhibits the correspondence that you</p>
Page 39	Page 41
<p>1 suffered which was a left MCA stroke, and its cause 2 and its effect on her longevity, not as an internist 3 or pulmonologist, so I only focused on the areas 4 where I had expertise. 5 Q. But in fairness, you were asked 6 additionally by Mr. Kuri to comment on the 7 appropriateness of the care provided by his client, 8 correct? 9 A. Correct. And my feeling was it was out of 10 my area, therefore, that I couldn't do and in 11 conversation as a neurosurgeon since I do have 12 expertise in cerebral vascular disease and its cause, 13 treatment and prognosis, that I did do. 14 Q. And I take it the same thing would apply 15 in terms of your feeling that you could not comment 16 on the appropriateness of the care provided by 17 Dr. Dean Rich, Dr. Patrick Rich's son, is that 18 correct? 19 A. Agree. 20 Q. So you don't have any opinions that you 21 intend to provide at the time of trial as it relates 22 to the issue of whether either or both of the 23 doctors, Dr. Patrick Rich, or Dr. Dean Rich, complied 24 with an accepted standard of care in treating 25 Mrs. Speicher, is that correct?</p>	<p>1 have in front of you, the cover letters and the 2 letter, starting with the letter from July of '03 3 from Mr. Kuri and the others. 4 The court reporter perhaps can mark them, 5 attach a copy to the deposition transcript and then 6 return the originals to you. This way you can move 7 on and we can deal with more important things. Is 8 that okay with you? 9 A. I have absolutely no objection but I have 10 a question. Please help me. The letters are titled 11 Personal and Confidential. Does that mean anything 12 from my standpoint? 13 Q. It may mean something to you that is 14 personal and confidential but for purposes of the 15 deposition, anything from Reminger & Reminger on this 16 case that you have in front of you, I'm asking that 17 you give to the court reporter and allow her to 18 individually put exhibit stickers on them numbering 19 them consecutively from 1 to 10 or what have you. 20 MR. KURI: That's fine, Doctor. 21 THE WITNESS: I have no objection. 22 BY MR. MISHKIND: 23 Q. The report that you wrote on 24 August 11, 2003, this contains all of the opinions 25 that I take it you anticipate providing at the trial</p>

<p style="text-align: right;">Page 42</p> <p>1 of this case? Is that true?</p> <p>2 A. Well, it certainly goes to the causation.</p> <p>3 The only issue which I touched on tangentially was as</p> <p>4 a result of this obviously her life expectancy was</p> <p>5 quite dramatically affected. But those are really</p> <p>6 the issues. Yes. Not anything much beyond that.</p> <p>7 Q. Do you have an opinion as to what her life</p> <p>8 expectancy would have been had she not suffered the</p> <p>9 affects of the pulmonary embolism and the stroke and</p> <p>10 survived the events at the end of January, early part</p> <p>11 of February of 2001?</p> <p>12 A. Yes.</p> <p>13 Q. What is that opinion?</p> <p>14 A. I think she would have survived some</p> <p>15 number of years. Now, I think it would have been</p> <p>16 certainly in the single digit because had she not had</p> <p>17 the stroke which she did have, we know she has</p> <p>18 vascular disease there. That's what led to likely</p> <p>19 thrombosis of her middle artery and that obviously</p> <p>20 can affect one's life expectancy.</p> <p>21 Beyond that, I think single digit would be</p> <p>22 very good for her, I don't think she would absent the</p> <p>23 stroke and absent the PE have lived longer than that.</p> <p>24 Q. Are you able to be any more specific other</p> <p>25 than single digits in terms of how much longer she</p>	<p style="text-align: right;">Page 44</p> <p>1 understanding you feel that she had underlying</p> <p>2 vascular disease, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. What would have caused her to become</p> <p>5 symptomatic suffering a stroke that would have taken</p> <p>6 her life a few to several years down the road?</p> <p>7 A. I believe --</p> <p>8 Q. What event most likely?</p> <p>9 A. I believe the same thing that caused her</p> <p>10 to die in the hospital. You asked me to assume that</p> <p>11 didn't happen so I made that assumption, but she</p> <p>12 clearly had a, I believe arterial sclerotic disease</p> <p>13 of her left MCA and she had a blockage when she was</p> <p>14 in the hospital. I think the same scenario would</p> <p>15 likely have occurred had she not been in the</p> <p>16 hospital.</p> <p>17 Now, if I assume hypothetically it doesn't</p> <p>18 happen when it did, I think it's going to happen in</p> <p>19 the future.</p> <p>20 Q. Just so I have a framework when I'm asking</p> <p>21 you questions for the balance of the deposition, if</p> <p>22 she had not had the pulmonary embolism, can we agree</p> <p>23 that she most likely would not have been in the</p> <p>24 hospital in February of 2001?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 would have lived?</p> <p>2 A. Well, again, as I say, we know that she</p> <p>3 has significant amount of vascular disease in her</p> <p>4 left middle cerebrum. Assuming it had not occluded</p> <p>5 she was in the hospital, I believe there is a real</p> <p>6 likelihood it would have in the future. We don't</p> <p>7 know about other vascular disease in the brain. I</p> <p>8 don't believe she had an autopsy. A few to seven</p> <p>9 years, something not beyond that. It would be</p> <p>10 difficult for me to say.</p> <p>11 Q. What would have caused her death in a few</p> <p>12 to several years?</p> <p>13 A. The most likely thing is some type of</p> <p>14 vascular disease which caused her death during the</p> <p>15 hospitalization.</p> <p>16 Q. What would have been the precipitating</p> <p>17 event to trigger the symptomatic vascular disease?</p> <p>18 A. Well, I think what actually claimed her if</p> <p>19 I say -- if I assume hypothetically that she did not</p> <p>20 have her stroke when she was in the hospital, I think</p> <p>21 there is a real good chance she would have it down</p> <p>22 the road. And I think the outcome at that point then</p> <p>23 would have been the same.</p> <p>24 Q. Maybe my question wasn't worded well.</p> <p>25 What would have caused the stroke, it's my</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. And is there in your mind a relationship</p> <p>2 between the pulmonary embolism and the development of</p> <p>3 her stroke?</p> <p>4 A. No, sir.</p> <p>5 Q. None whatsoever?</p> <p>6 A. I don't think one had any direct impact on</p> <p>7 the other. Correct.</p> <p>8 Q. So it's just coincidental that she was in</p> <p>9 the hospital for the treatment of the pulmonary</p> <p>10 embolism that she happened to suffer an unrelated</p> <p>11 stroke. Is that your opinion?</p> <p>12 A. Well, I think that's correct. Had she</p> <p>13 been at home, the same thing would have happened in</p> <p>14 her bed. She happened to be in the hospital. But</p> <p>15 based upon the medical records around the time of the</p> <p>16 stroke before and after, I think that's true.</p> <p>17 Q. Now, you said that you have read the</p> <p>18 testimony of Dr. Herwig and Dr. Martin, or at least</p> <p>19 the reports?</p> <p>20 A. I have their reports. I don't recall</p> <p>21 whether I actually saw the depositions. I just don't</p> <p>22 recall.</p> <p>23 Q. So if Dr. Martin has testified that Jean</p> <p>24 Speicher's severe hypotension and bradycardia noted</p> <p>25 around 2 a.m. on February 6th precipitated her</p>

Page 46	Page 48
<p>1 cerebral vascular accident, would you disagree with 2 that statement?</p> <p>3 A. Actually, I think that I would. Yes, sir.</p> <p>4 Q. And if Dr. Martin, pulmonary expert for 5 Dr. Dean Rich, has testified that having a massive 6 left middle cerebral artery infarct not have 7 occurred -- I'm sorry.</p> <p>8 Let me rephrase that. That the massive 9 left middle cerebral artery infarct would not have 10 occurred in the absence of hemodynamic compromise 11 caused by her recurrent pulmonary thrombo-emboli, I 12 take it you would disagree with that as well?</p> <p>13 A. Correct.</p> <p>14 Q. Have you seen the opinions of Dr. Bacik, 15 Dr. Conomy and Dr. Bibler, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And so that I don't have to go through all 18 of their opinions individually, would you agree with 19 me that essentially all of the doctors have opined 20 that the pulmonary embolism caused the patient to 21 become hypotensive and that hypotension then 22 precipitated the stroke that the patient experienced? 23 Is that essentially what all of the experts that you 24 have read have testified to?</p> <p>25 A. Those three depositions, I believe would</p>	<p>1 A. And then go to the next page. The next 2 page isn't dated but we know it has to be subsequent 3 to the 12:30 a.m. or a portion thereof actually, a 4 portion thereof.</p> <p>5 I'll wait until you find that. At the top 6 it says PICU-4. It's a progress note and the bottom 7 left in the, where it says date, time, it just says 8 note.</p> <p>9 Q. This is in the PICU?</p> <p>10 A. Yes. These are handwritten notes, Akron 11 General Medical Center. And it's part of the note 12 that's written at 12:30 a.m. Let me know when you 13 find that note.</p> <p>14 Q. What does the 12:30 a.m. note start with?</p> <p>15 A. Patient getting TPA. Progressively 16 worsening. Okay. Go to the next page. At the top 17 of the page, it talks about the patient being 18 intubated. Talks about the blood pressure. Are we 19 there?</p> <p>20 Q. Yes, I am, sir.</p> <p>21 A. Blood pressure of 128 over 70 and then the 22 note at the bottom that says, patient had been awake, 23 alert, talking with pulse and blood pressure 24 throughout prior to intubation. Never lost blood 25 pressure, pulse despite everything. If the patient</p>
Page 47	Page 49
<p>1 agree with that, yes, sir.</p> <p>2 Q. Have you seen any testimony either by way 3 of depositions or reports in this case that would 4 support the opinion that you have, and that is, that 5 there was no relationship between the pulmonary 6 embolism and the stroke that the patient suffered 7 during this hospitalization?</p> <p>8 A. I can't speak to somebody else's report or 9 testimony. I made my opinion based solely upon the 10 medical records.</p> <p>11 Q. Is there any statement by any of the 12 medical caregivers that you see, those people that 13 were caring for the patient during the 14 hospitalization that supports the foundation for your 15 opinion that the stroke was essentially unrelated to 16 the pulmonary embolism?</p> <p>17 A. Well, I believe the answer to that would 18 be in the affirmative. And I would refer to, and my 19 records are not Bates stamped, so I can't help you 20 there. But if you were to look at the, pardon me, 21 record timed 12:30 a.m. on the 5th, just so we can be 22 on the same page, and then go to the next page.</p> <p>23 Q. Is this a progress note, Doctor?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay.</p>	<p>1 is able to talk, communicate, be awake and alert, 2 even though the patient is somewhat hypotensive, 3 which she was for a while, she clearly would not 4 precipitate the stroke or she would not be awake, 5 alert and talking. So that event has to occur after 6 the patient was intubated.</p> <p>7 After the patient was intubated, her blood 8 pressure was 120 over 70 and yet she was soon found 9 to have dilated pupils with a low but adequate blood 10 pressure, and after all the drugs wore off, it became 11 clear that something more had gone on. She had her 12 CT that showed this massive stroke which obviously 13 occurred subsequent to her intubation after her blood 14 pressure was actually pretty good.</p> <p>15 Q. What was her blood pressure after 16 intubation?</p> <p>17 A. Depending upon which time her blood 18 pressure was, correction, 120 over 70, at 1 o'clock, 19 correction, at 2340, which was before it was 80 over 20 50 then she has her intubation, 120 over 70, 85 to 90 21 over 60, and by then she's had her stroke and in the 22 early morning hours after the event, that is after 23 intubation, after her stroke, she has one blood 24 pressure 75 over 38 then I believe it's 88 over 47, 25 101/58, and 111/62.</p>

Page 50	Page 52
<p>1 Q. Do you have any evidence that you can 2 point me to that substantiates that this patient had, 3 prior to the stroke, that she had significant 4 cerebral artery thrombosis?</p> <p>5 A. I'm not sure I understood what you are 6 asking me.</p> <p>7 Q. Where was the occlusion in the 8 distribution of the left middle cerebral artery, 9 where exactly?</p> <p>10 A. Based upon the CT scan, it would be at the 11 proximal beginning of the left MCA.</p> <p>12 Q. And how long had she had this occlusion?</p> <p>13 A. Well, she had the complete occlusion 14 sometime after she's intubated because she is awake 15 and alert and talking before which she couldn't do if 16 she had a complete occlusion. She obviously had 17 disease at that site which occluded sometime after 18 intubation, sometime after her blood pressure was 19 probably actually better.</p> <p>20 Q. What degree of occlusion do you believe 21 she had prior to the admission to the hospital?</p> <p>22 A. I suspect it was probably, and this is 23 absolutely speculative because we don't have an 24 answer. It had to be a significant degree, one which 25 was not symptomatic, hemodynamically, which means it</p>	<p>1 studies. I said it was probably in the range of 70 2 to 80, not knowing her collateral. It could have 3 been more. I have no way of knowing. That I don't 4 have a study which would tell me what for example her 5 collateral flow was and whether she had higher degree 6 stenosis, a lower degree. I can't tell you.</p> <p>7 Q. What event occurred then to cause the, in 8 your opinion, to cause the total occlusion and thus 9 the stroke?</p> <p>10 A. I think the most likely is that she had a 11 thrombosis, that is, she had an arteriosclerotic 12 disease. She is entitled certainly by age, 77, and 13 occlusions occur all the time. Patients sleeping, 14 patients sitting at their breakfast table. Whether a 15 small plaque came off, which is the other type of 16 stroke, thrombotic that occurs, I have no way of 17 knowing. I don't believe she had an autopsy. As I 18 mentioned, I don't believe we have any type of good 19 vascular study done before. That is the most common.</p> <p>20 Obviously an embolism is always a 21 consideration. Middle cerebrum is always a thought. 22 It's certainly a possible -- I think a localized 23 thrombosis on a arteriosclerotic basis is most likely 24 and often the acute ones because of the plaque on 25 there suddenly gets a thrombosis on it and there is</p>
Page 51	Page 53
<p>1 was probably less than 70 or 80 percent. Beyond 2 that, there is no way of me knowing without studies 3 and there would be no specific reason to do those 4 studies.</p> <p>5 Q. Her doppler ultrasound in January of 2000 6 was normal, correct?</p> <p>7 A. Her doppler of her carotids I believe was, 8 yes, sir.</p> <p>9 Q. And is that of any significance in terms 10 of giving you an indication as to the extent of the 11 disease process that she had in the distribution of 12 the left middle cerebral artery prior to February of 13 2001?</p> <p>14 A. It's not going to because you can have 15 disease in the carotids and the middle cerebral may 16 look pretty good, may look fine and vice versa, so 17 the answer is no. It's not going to help us one way 18 or the other. You'd have to do either CTA or MRA or 19 an angiogram to assess that issue.</p> <p>20 Q. And she had in your opinion prior to the 21 admission to the hospital less than 70 percent 22 occlusion of the proximal distribution of the left 23 middle cerebral artery?</p> <p>24 A. What I said it was speculative in my 25 guess, and it is a guess because she never had the</p>	<p>1 an occlusion.</p> <p>2 Q. Do you have any scientific evidence from 3 the hospital record that you could point to that 4 would support a local thrombotic event that caused 5 the occlusion in the cerebrum?</p> <p>6 A. Local -- well, let me work backwards. I 7 don't think there is any debate she had a massive 8 left cerebral infarct from the distribution from the 9 MCA. It has to occlude by thrombosis or from an 10 embolism. Both are certainly possible. The more 11 likely and the more typical is going to be a 12 thrombosis.</p> <p>13 We know that she had adequate perfusion to 14 her left MCA distribution up until the time she is 15 intubated. The note makes it very clear. That's in 16 spite of her lower blood pressure after she is 17 intubated. Then she has a stroke. I think she had a 18 run of the mill thrombosis in someone who has an MCA 19 which is not an unusual cause of death of someone in 20 their late 70s.</p> <p>21 Q. In terms of an embolic event taking place, 22 by definition, are you satisfied that she most likely 23 did not have an embolic event causing the CVA?</p> <p>24 A. I think it would be less likely than a 25 thrombotic because the entire vessel was occluded.</p>

Page 54	Page 56
<p>1 That is the entire distribution of the middle 2 cerebrum was occluded.</p> <p>3 Q. What injury did the patient in your 4 opinion, Jean Speicher, suffer as a direct result of 5 the pulmonary embolism and the treatment that was 6 provided for the pulmonary embolism?</p> <p>7 A. What condition?</p> <p>8 Q. What injuries, what effect on her body?</p> <p>9 A. She clearly had stress on her 10 cardiovascular pulmonary system which actually looks 11 to have been gotten straightened out prior to the 12 time, just prior to the time she had her stroke. She 13 obviously had some degree of hemodynamic effect. 14 That's why she was hypotensive, required various 15 medication she did, and indeed the intubation.</p> <p>16 Q. Do you have an opinion as to what her 17 degree of disability or morbidity would have been had 18 she not suffered the stroke, but had recovered 19 following the treatment for her PE?</p> <p>20 MR. KURI: Objection. Go ahead.</p> <p>21 THE WITNESS: You are getting me a little 22 bit out of my area of expertise. I'm not a 23 pulmonologist. I have had patients survive PEs 24 obviously. Depending on the severity, they may or 25 may not have had pulmonary limitations. Otherwise</p>	<p>1 in terms of whether or not he was involved in any 2 aspect of the care of Mrs. Speicher in the hospital?</p> <p>3 A. I'm not sure I can read the signature, so 4 I can't answer the question. Yes, I can. Ginella. 5 I haven't focused on it one way or the other. I 6 don't know.</p> <p>7 Q. And what is Dr. Ginella's opinion as to 8 the cause of death?</p> <p>9 A. Respiratory failure secondary to pulmonary 10 embolism.</p> <p>11 Q. And I take it then Dr. Ginella would be 12 included on the list of doctors that you disagree 13 with in terms of cause of death in this case?</p> <p>14 A. I would agree because I think it's 15 incomplete.</p> <p>16 Q. You disagree with his opinion as to the 17 cause of death, correct?</p> <p>18 A. Correct. I think it's incomplete.</p> <p>19 Q. Well, was the pulmonary, was the 20 respiratory failure secondary to the pulmonary 21 embolism a contributing factor to the patient's 22 death?</p> <p>23 A. Actually it probably was not based upon 24 the records that we talked about.</p> <p>25 Q. So then you disagree entirely with what</p>
Page 55	Page 57
<p>1 they tend to do reasonably well for those who 2 survive.</p> <p>3 BY MR. MISHKIND:</p> <p>4 Q. But you would defer to a pulmonary expert 5 with regard to the specifics of any morbidity or 6 mortality that would be associated with the pulmonary 7 embolism in this case, is that correct?</p> <p>8 A. Well, not completely. If somebody says 9 that this woman died because of a pulmonary embolism, 10 I would take issue with that. If somebody who was a 11 pulmonologist were to discuss the long-term 12 limitations or lack thereof of someone who has had a 13 PE and gotten over it, I would certainly defer to 14 them.</p> <p>15 Q. The death certificate, have you seen that 16 in this case?</p> <p>17 A. I believe so. Yes.</p> <p>18 Q. If could you pull that out for a moment.</p> <p>19 A. Sure. Yes, sir. I have it here.</p> <p>20 Q. We know there is no autopsy, but we know 21 the death certificate is signed by a physician.</p> <p>22 A. Yes. I can't catch what you first said.</p> <p>23 Q. We know there was no autopsy.</p> <p>24 A. Yes. Thank you.</p> <p>25 Q. Do you recognize the name of the physician</p>	<p>1 Dr. Ginella says in the death certificate, both 2 incomplete as well as that which is stated? Correct?</p> <p>3 A. I think as it's stated there is 4 inaccurate. Correct. The patient died of a massive 5 brain herniation from her stroke.</p> <p>6 Q. Totally unrelated to the pulmonary 7 embolism in your professional opinion?</p> <p>8 A. It is because she had been stabilized. 9 Her neurologic status was absolutely fine during her 10 rockiest time of treatment for her hypotension from 11 her PE, and that was actually stabilized, and then 12 she had her stroke, so I believe it is clearly, it 13 clearly is independent.</p> <p>14 Q. I think you touched on before that a 15 stroke can be caused by hypotension, correct?</p> <p>16 A. Sure. You can get cerebral anoxia.</p> <p>17 Q. If a patient has pre-existing ischemic 18 disease of an artery, are they at greater risk of a 19 stroke during severe hypotensive episodes?</p> <p>20 A. They can be.</p> <p>21 Q. And if a patient has a severe hypotensive 22 episode and has pre-existing ischemic disease, what 23 is the most common mechanism that causes the stroke 24 from a pathophysiological standpoint during that 25 hypotensive episode?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. It would be diminished flow due to some 2 degree of obstruction. 3 Q. Would diminished lull due to the 4 obstruction cause the same results as a thrombosis in 5 an otherwise ischemic artery? 6 A. It can. The answer is yes. It can. 7 Q. Are there any studies that were done 8 immediately after the stroke or prior to 9 Mrs. Speicher's death that would confirm that there 10 was some thrombotic event, some plaque, if you will, 11 that occluded the pre-existing ischemic artery 12 leading to this patient's stroke? 13 A. I don't believe she ever had an MRA or a 14 CTA. And I don't believe she had an autopsy. The 15 only thing I saw was a CT scan that was done after 16 the fact so beyond that, I did not see anything. 17 Q. And the CT doesn't indicate that there was 18 a thrombotic event superimposed on pre-existing 19 ischemic artery causing the stroke, correct? 20 A. Correct. All the CT will show is the 21 effect of blockage of the left main middle cerebral 22 artery. 23 Q. And what is shown on the CT can just as 24 easily be indicative from a pathophysiological 25 standpoint of a profusion defect caused by</p>	<p style="text-align: right;">Page 60</p> <p>1 Doctor? 2 A. We are fine. My surgery isn't until about 3 4 o'clock, and I think it's only 20 after two. 4 Q. Do you agree with Dr. Conomy when he 5 indicates that Mrs. Speicher's stenotic cerebral 6 vascular disease became symptomatic only under 7 circumstances of severe and sustained systemic 8 hypotension and there is no reason to think that that 9 would have happened until it became severe? 10 A. I disagree with that statement. 11 Q. And without repeating that which we have 12 already said, would you tell me why you disagree with 13 it? 14 A. Well, it would be hard to without 15 repeating some of what I have said because she did 16 have hypotension, which was dealt with and was 17 improved. During her period of hypotension, she 18 never had a stroke. She was awake and talking, and 19 so that statement is not accurate. 20 Q. Any other basis for your statement other 21 than what you just said? 22 A. Well I'm just relying on the 23 contemporaneous medical records that says she is 24 awake, alert, and talking. 25 Q. Have you reviewed the mean arterial</p>
<p style="text-align: right;">Page 59</p> <p>1 hypotension in a patient that has underlying ischemia 2 of the artery, correct? 3 A. It can be. That's why you can't tell 4 clinically from looking at the scan and must 5 correlate it as I did with the medical records which 6 demonstrate that that distribution, the left MCA 7 which not only would go towards alertness and 8 awokeness but also speech was normal right up until 9 the time she was intubated and her blood pressure was 10 actually better, so you can't tell looking at the 11 scan the pathophysiology. You can just tell there 12 has been a big infarct. 13 Q. You read over Dr. Conomy's deposition? 14 A. I did. Yes, sir. 15 Q. Do you know Dr. Conomy, by the way? 16 A. No, sir. 17 Q. Never met him? 18 A. No, sir. 19 Q. I'm going to ask you whether you agree or 20 disagree with certain statements that Dr. Conomy has 21 made and if you disagree, tell me why and hopefully 22 we'll be able to wrap things up? 23 A. Okay. Otherwise I need to take a short 24 break. 25 Q. What time do you need to be somewhere,</p>	<p style="text-align: right;">Page 61</p> <p>1 pressures and the graphics on patient's blood 2 pressure? 3 A. On this patient? 4 Q. Yes. 5 A. I have looked at the chart. I don't 6 specifically recall which ones I have looked at. 7 Q. Would a sustained mean arterial pressure 8 between 60 and 80 be considered for a period of over 9 an hour, would that be considered sustained 10 hypotension? 11 A. A mean of 60 to 80 is mild hypotension. 12 You are talking about the mean. Yes. That is mild 13 hypotension. Yes, sir. It is. 14 Q. And is mild hypotension in a patient that 15 has underlying ischemic disease, is that sufficient 16 enough in an ill patient, that is a patient that's in 17 the hospital being treated for pulmonary embolism, is 18 that enough to cause systemic hypotension leading to 19 a stroke due to inadequate perfusion? 20 A. It would be usual if somebody has a mean 21 for example 70 or 80 to have any problem with it. 22 That's not hypotensive unless the patient had a 23 history of severe hypertension. But the real issue 24 is not whether it's 60, 70 or 80. It's whether at 25 those levels it affected the cerebrovascular. If the</p>

<p style="text-align: right;">Page 62</p> <p>1 patient is awake and talking, whether it's 50, 60, 80 2 or 50, it ain't doing it.</p> <p>3 Q. Do you know how long a period of time the 4 patient was awake and talking continuously prior to 5 the stroke from a note that you read or from anything 6 else in the record?</p> <p>7 A. Well, let me just refer to the note 8 because that is what I am relying on which says 9 awake, alert and talking throughout, throughout prior 10 to intubation. And then after she's intubated, she 11 was unresponsive, of course, she had a lot of drugs. 12 She also had a stroke and her blood pressure is being 13 maintained immediately afterwards at a level that 14 clearly would not cause that.</p> <p>15 Q. Doctor, would you agree with Dr. Conomy's 16 statement that a PE, pulmonary embolism precipitating 17 hypotension in an ill hospitalized patient is not an 18 uncommon situation?</p> <p>19 A. PE causing hypotension? That's not rare. 20 I agree with that.</p> <p>21 Q. Of what significance is the normal carotid 22 ultrasound in January of 2000, just in terms of the 23 magnitude of the underlying disease process between 24 January of 2000 and February of 2001?</p> <p>25 A. Really not much.</p>	<p style="text-align: right;">Page 64</p> <p>1 time the plaque or the atherosclerotic disease in the 2 artery on the wall of the, the lumen if you will, 3 broke off causing a complete occlusion of the 4 distribution to the left middle cerebral artery that 5 just coincidentally happened at a time that this 6 patient was being treated for the impact of a PE?</p> <p>7 A. Well, except I don't know that it broke 8 off. We know it thrombosed. Whether it developed 9 clot just like a coronary occurs. It can break off 10 or you can get clot locally in an acute thrombosis. 11 We have no way of knowing which it was. But with 12 that caveat, that's correct.</p> <p>13 Q. And other than your read of the record in 14 terms of her consciousness and your interpretation of 15 her blood pressure, there is no scientific evidence 16 in the record that you can point to to support the 17 occurrence of a thrombotic event leading to the CVA, 18 true?</p> <p>19 A. It's either thrombotic or embolic. There 20 are only two options so absolutely unequivocal it's 21 more than the other. I think thrombosis seems to be 22 more common. There was not an autopsy. We'll never 23 know. She is awake, alert and talking during that 24 period of time. She has not had a vascular event. 25 Her blood pressure is better after than before, and</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. KURI: Objection. Asked and answered. 2 THE WITNESS: I think we went over that 3 earlier. That is, you can have fairly significant 4 carotid disease and the intracranial vessels look 5 good or not good or vice versa. So you need 6 something more specific than that. It's not any good 7 for the middle cerebral.</p> <p>8 BY MR. MISHKIND: 9 Q. You do agree that she had stenotic 10 cerebral vascular disease, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Where it appears that you and Dr. Conomy 13 disagree, and let me know, is that you believe that 14 she had underlying stenosis of an important artery 15 that prior to her admission to the hospital was a 16 symptomatic, first let me stop at that point. You 17 agree with that statement, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And prior to her admission, this stenosis 20 or narrowing was caused by a disease process that had 21 not been impacting the patient's quality of life as 22 far as you could tell, correct?</p> <p>23 A. Yes.</p> <p>24 Q. The difference in your opinion and 25 Dr. Conomy's is you believe that after a period of</p>	<p style="text-align: right;">Page 65</p> <p>1 she does have a vascular event.</p> <p>2 Q. Well, inadequate perfusion would be a 3 vascular event, correct?</p> <p>4 A. No, sir. Not unless it's symptomatic.</p> <p>5 Q. If the patient's hypotension was the cause 6 of the stroke, would that be considered a thrombotic, 7 would that precipitate a thrombotic event?</p> <p>8 A. Could it, if the patient dropped their 9 blood pressure, no, if she had a stroke at that 10 point. They are working her up, treating her and she 11 has a stroke when her blood pressure bottoms out, the 12 answer is yes.</p> <p>13 Q. That can cause a localized thrombosis?</p> <p>14 A. The answer is it absolutely could, and 15 with that, almost instantly the patient would lose 16 her ability to sleep -- to speak and she would become 17 obtunded. She would lose her speech like that. 18 Apparently she never did.</p> <p>19 Q. You would expect if there was a 20 hypotensive episode leading to the CVA that from a 21 graphic standpoint, you would expect the graphic 22 blood pressure to drop down almost instantaneously?</p> <p>23 A. Not necessarily at all. No, sir. I would 24 not. If the hypotension led to the stroke which it 25 can, the patient during that period of time would</p>

Page 66	Page 68
<p>1 have their stroke and manifest the symptoms of it, 2 including in this case an immediate inability to 3 speak, and the records would contradict that as 4 having occurred. Off the record. 5 (Discussion off the record.) 6 BY MR. MISHKIND: 7 Q. The experts that have been deposed in this 8 case from both sides have opined at Mrs. Speicher's 9 stroke was caused by systemic hypotension, coupled 10 with resultant cerebral blood flow defect. I believe 11 regional. Let me strike that and start over again. 12 The experts of the deposed that have 13 opined in this case have indicated that the stroke 14 was caused by systemic hypotension coupled with 15 resultant regional cerebral blood flow defect caused 16 by pre-existing stenosis of the middle left artery. 17 I take it that as stated you disagree with 18 that opinion? 19 A. Yes. 20 Q. For the reasons that we have said before. 21 You don't believe that she had the hypotension had 22 resolved in your opinion and it was therefore not 23 causative of the cerebral blood flow defect leading 24 to the stroke? 25 A. Right. Her blood pressure had stabilized</p>	<p>1 A. Based upon the numbers and the fact -- 2 Q. Correct? 3 A. Yes. Based upon the numbers and the fact 4 that she was awake, alert and speaking during all of 5 those blood pressures we talked about earlier, she is 6 her own test case, correct. I don't believe it 7 would. 8 Q. What impact in your opinion did the 9 hypotensive episode prior to intubation have on the 10 development of the thrombosis? 11 A. Probably none. 12 Q. You said you reviewed Dr. Conomy's 13 deposition. When did you review it last? 14 A. I looked at it within the last few days 15 and then I looked at it a while ago. 16 Q. Did you look at his, the exhibits that he 17 drew of the distribution of the left cerebral artery, 18 as well as the discussion of the brain flow auto 19 regulation, Exhibit D from his deposition? 20 A. Sure. 21 Q. And Exhibit C was the diagram of the 22 occlusion in the left middle cerebral artery? 23 A. I believe so. The one says to Phil at the 24 top. 25 Q. Right.</p>
Page 67	Page 69
<p>1 clearly as we have talked about, and if it was 2 related to the hypotension, it would have occurred 3 during that period of time. The note that we have 4 discussed clearly makes it clear that that could not 5 have happened or did not happen. 6 Q. How long before you believe she had 7 stabilized, had she had a hypotensive episodes prior 8 to her stroke? 9 A. Well, she was hypotensive and being 10 treated and indeed that was one of the reasons for 11 stabilization. She was intubated, her blood pressure 12 up to that point and we went through the numbers 13 earlier and indeed after she was intubated, her blood 14 pressure is even better. 15 Q. How long after her intubation did she 16 suffer the stroke? 17 A. The intubation I believe was around 18 12:30ish, and her stroke appears to have occurred 19 sometime after that, and probably before 2 a.m. or in 20 that general ballpark. 21 Q. And it's your opinion that the hypotension 22 that had occurred prior to the stroke that you 23 believe had resolved would not be enough of a 24 causative event to precipitate a profusion defect 25 sufficient to cause a stroke?</p>	<p>1 A. Yes, sir. 2 Q. In terms of his explanation, the algorithm 3 or the auto regulation graph that he has prepared, do 4 you take issue with his explanation given his 5 deposition and the chart that he has drawn? 6 A. Well, I can't rely upon the chart 7 specifically. The concept of auto regulation, he is 8 absolutely correct. However, any individual patient 9 is their own best test model, and indeed in some 10 patients, the blood pressure of 90 can cause 11 problems. 12 In another patient, you'll tolerate 50. 13 If the patient had complete loss of auto regulation, 14 she would have infarct her whole brain which she know 15 she didn't do, i.e., blood pressure had gotten that 16 low and she had no cerebral profusion. 17 If the levels that she had gotten to at 18 her lowest did not support adequate flow through her 19 left MCA which could have happened, she would not 20 have been awake, alert and talking and she was. So 21 what he writes is in theory applicable in the general 22 sense. I absolutely agree, but in this case, I don't 23 think it fits. 24 Q. So his theory of inadequate profusion 25 caused by the systemic hypotension is in your opinion</p>

<p style="text-align: right;">Page 70</p> <p>1 based in this case incorrect?</p> <p>2 A. Based upon the notes that we have, we have</p> <p>3 talked about a number of times, I agree with you. It</p> <p>4 is incorrect.</p> <p>5 Q. And all of the other experts who have</p> <p>6 reviewed this case and provided opinions on the cause</p> <p>7 of the stroke are also incorrect?</p> <p>8 A. Can't speak for everyone else but if you</p> <p>9 read the note and rely upon the note and its</p> <p>10 contemporaneous timing to the events, this theory</p> <p>11 doesn't fit. Without that note and if one had</p> <p>12 skipped over reading that note, you might come to a</p> <p>13 different conclusion, but it's there in the flow</p> <p>14 sheet of the chart.</p> <p>15 Q. Doctor, beside the opinion as it relates</p> <p>16 to the cause of the stroke, as well as your opinion</p> <p>17 that you expressed in terms of her life expectancy</p> <p>18 had she not suffered the stroke at that time, do you</p> <p>19 have any other opinions that you have arrived at and</p> <p>20 that you intend to provide at the trial of this</p> <p>21 matter?</p> <p>22 A. I think those are the two areas.</p> <p>23 Q. And have we covered the bases upon which</p> <p>24 you have arrived at those opinions during the course</p> <p>25 of this deposition?</p>	<p style="text-align: right;">Page 72</p> <p>1 (Whereupon, at 2:45 p.m., the taking of</p> <p>2 the instant deposition ceased.)</p> <p>3</p> <p>4 _____</p> <p>5 Signature of the Witness</p> <p>6</p> <p>7 SUBSCRIBED AND SWORN to before me this _____ day</p> <p>8 of _____, 2004</p> <p>9</p> <p>10 _____</p> <p>11 NOTARY PUBLIC</p> <p>12 My Commission expires: _____</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. And you talked about life expectancy?</p> <p>3 A. Yes. You just mentioned that a minute</p> <p>4 ago.</p> <p>5 Q. We touched on that?</p> <p>6 A. Yes.</p> <p>7 Q. Exactly. Doctor, I don't believe I have</p> <p>8 any further questions for you. Obviously to the</p> <p>9 extent that you arrive at any additional opinions or</p> <p>10 change your opinions between now and the time of the</p> <p>11 trial, I'd ask that you notify Mr. Kuri, otherwise, I</p> <p>12 have no further questions for you.</p> <p>13 A. Thank you. That's fair.</p> <p>14 MR. MURPHY: I have no questions. Patrick</p> <p>15 Murphy speaking.</p> <p>16 MR. KURI: Doctor, I assume you are going</p> <p>17 to want to read this?</p> <p>18 THE WITNESS: Yes, sir.</p> <p>19 MR. KURI: All right.</p> <p>20 MR. MISHKIND: Normal delivery is fine.</p> <p>21 However you want to arrange for the signature through</p> <p>22 Mr. Kuri. You have my email and I'll take a regular</p> <p>23 as well as email transcript, Miss Court Reporter.</p> <p>24 (Ammerman Exhibit Nos. 1-4 were</p> <p>25 marked for identification.)</p>	

A		
ability 65:16	anoxia 12:14 57:16	available 15:15
able 23:15 24:13 42:24 49:1 59:22	answer 9:2 12:12,14 17:16,19,21 18:13 19:23 20:2,5 24:22,24 27:11 29:15 34:1,12 35:15 47:17 50:24 51:17 56:4 58:6 65:12,14	Avenue 4:4 5:7
above-entitled 1:16	answered 5:17 63:1	average 31:25
absence 46:10	anticipate 4:17 41:25	AVM 22:15
absent 42:22,23	anybody 30:22	awake 48:22 49:1,4 50:14 60:18,24 62:1,4,9 64:23 68:4 69:20
absolutely 41:9 50:23 57:9 64:20 65:14 69:8,22	Apparently 65:18	awakeness 59:8
acceptable 38:20	APPEARANCES 2:1	a-year-old 17:22
accepted 39:24	appears 63:12 67:18	a.m 45:25 47:21 48:3,12,14 67:19
accident 12:11 20:22 46:1	applicable 69:21	
accountant 28:12,17	apply 39:14	B
accurate 60:19	appreciate 25:20	B 3:8,10,14,16
action 26:9	appropriate 38:21	Bacik 33:5 35:18 46:14
active 26:17 35:6	appropriateness 37:12 38:15 39:7 39:16	back 13:23 34:5
actual 8:10 16:21	area 11:15 17:2 24:19 26:19 39:10 54:22	background 37:14
acute 38:5 52:24 64:10	areas 39:3 70:22	backwards 53:6
additional 15:25 35:14 71:9	ARMOUR 1:4	balance 16:20 44:21
additionally 39:6	arrange 71:21	ballbark 24:8
address 4:4 5:7,8	arrive 33:7 71:9	ballpark 14:13 19:18 32:24 67:20
adequate 49:9 53:13 69:18	arrived 34:7 70:19,24	banging 12:21
admission 50:21 51:21 63:15,19	arterial 44:12 60:25 61:7	Barberton 33:16
adult 7:20	arteriosclerotic 52:11,23	based 45:15 47:9 50:10 56:23 68:1 68:3 70:1,2
advertised 30:23	artery 42:19 46:6,9 50:4,8 51:12,23 57:18 58:5,11,19,22 59:2 63:14 64:2,4 66:16 68:17,22	bases 70:23
affect 42:20	article 6:19 40:11	basically 7:19 28:23 38:11
affiliated 24:20 30:14	articles 5:25 6:5,8,9,12,20 7:7	basis 17:2 52:23 60:20
affiliations 30:22	asked 14:5 17:4,11,16 28:20,22 37:19,25 38:8,14 39:5 44:10 63:1	Bates 47:19
affirmative 47:18	asking 4:14 14:7 41:16 44:20 50:6	Becker 2:5 27:2
age 52:12	aspect 56:2	bed 45:14
ago 6:7 14:14 16:23 20:1 22:14 28:20 30:4 68:15 71:4	assess 51:19	beginning 50:11
agree 39:19 44:22 46:18 47:1 56:14 59:19 60:4 62:15,20 63:9,17 69:22 70:3	associated 55:6	begins 22:22
ahead 11:13 37:6 54:20	Associates 30:8,15	behalf 2:3,11 15:4,5 22:25 25:13 34:9 37:10
ain't 62:2	association 26:10	believe 6:11 7:8,11 12:20 15:9,11 20:23 21:1,5,12,14,25 22:3 24:2,3 25:2 33:9 34:16 35:9,15,16 36:22 43:5,8 44:7,9,12 46:25 47:17 49:24 50:20 51:7 52:17,18 55:17 57:12 58:13,14 63:13,25 66:10,21 67:6,17,23 68:6,23 71:7
air 31:15,21	assume 43:19 44:10,17 71:16	bell 25:10,16
Akron 2:16 33:15 48:10	assuming 28:13 43:4	best 11:5 16:10 20:4,6 24:4 69:9
al 1:5,9	assumption 44:11	better 6:24 50:19 59:10 64:25 67:14
alert 48:23 49:1,5 50:15 60:24 62:9 64:23 68:4 69:20	atherosclerotic 64:1	beyond 20:2 21:18 28:14 42:6,21 43:9 51:1 58:16
alertness 59:7	attach 41:5	Bibler 33:5 35:18 46:15
algorithm 69:2	attorney 14:18 15:7 23:4,20,25 29:18 32:21	big 59:12
alive 28:24	attorneys 23:11 31:25 32:1	bill 29:19
alleged 14:2	August 4:16 5:6 7:4 30:6 33:3,7 38:19 41:24	binder 33:10
alleges 37:15	authored 19:19	bit 7:1 10:18 24:17 54:22
allow 41:17	authors 7:10	black 33:10
Allstate 29:3,5,12,18	auto 68:18 69:3,7,13	blockage 44:13 58:21
American 10:13	autopsy 43:8 52:17 55:20,23 58:14 64:22	blood 48:18,21,23,24 49:7,9,13,15 49:17,23 50:18 53:16 59:9 61:1
Ammerman 1:15 3:3,9,10,14,16 4:3,12,13 29:22 71:24	availability 30:23	
amount 43:3		
aneurism 6:16,19		
angiogram 51:19		

62:12 64:15,25 65:9,11,22 66:10 66:15,23,25 67:11,13 68:5 69:10 69:15 board 10:7,8,10,11,13,15 Bodo 3:10 body 54:8 Bonezzi 2:20 34:10,20 35:2 book 5:25 6:4,6 7:8 bookkeeper 28:11 books 5:25 7:7 bottom 48:6,22 bottoms 65:11 Boy 32:17 bradycardia 45:24 brain 43:7 57:5 68:18 69:14 break 4:24 59:24 64:9 breakdown 17:6 breakfast 52:14 breaks 16:10 brief 37:4,5,7 briefly 7:15 37:14 bring 25:16 broke 64:3,7 Bruce 1:14 3:3 4:3,12 Buckingham 25:15 Building 2:21 business 4:4 5:8 B.Ammerman 3:12	26:13,17,21,22 27:2 34:9 35:1,5,6 catch 55:22 causation 6:13,13 7:9 19:21 22:18 42:2 causative 66:23 67:24 cause 12:10,13 20:10 26:23 39:1,12 52:7,8 53:19 56:8,13,17 58:4 61:18 62:14 65:5,13 67:25 69:10 70:6,16 caused 20:21 43:11,14,25 44:4,9 46:11,20 53:4 57:15 58:25 63:20 66:9,14,15 69:25 causes 57:23 causing 53:23 58:19 62:19 64:3 caveat 64:12 ceased 72:2 Center 1:20 48:11 cerebral 12:2,10 20:21 39:12 46:1 46:6,9 50:4,8 51:12,15,23 53:8 57:16 58:21 60:5 63:7,10 64:4 66:10,15,23 68:17,22 69:16 cerebrovascular 61:25 cerebrum 43:4 52:21 53:5 54:2 certain 59:20 certainly 8:9,15 12:5 30:17 31:21 42:2,16 52:12,22 53:10 55:13 certificate 55:15,21 57:1 certified 10:7,8,11,15 cervical 9:9 15:23 chairman 30:2 chance 22:11 35:11 43:21 change 71:10 changed 30:11 changes 28:3 chapter 6:6 chapters 5:25 6:4 7:8 charge 31:1,4,7,10 charging 31:8,11 chart 61:5 69:5,6 70:14 CIMINELLI 1:18,23 circumstance 9:22 circumstances 60:7 cite 7:10 Citizens 33:16 city 31:11 claimed 43:18 clear 18:5 38:24 49:11 53:15 67:4 clearly 44:12 49:3 54:9 57:12,13 62:14 67:1,4 Cleveland 2:8,22 23:22 24:19 25:3 31:12 client 37:10,13 38:15 39:7 clients 25:13 clinically 59:4 close 17:9 26:25	clot 64:9,10 Cofield 15:9,9 coincidental 45:8 coincidentally 64:5 collateral 52:2,5 Columbia 1:19 come 19:5,13,14 23:16 28:7,13,14 29:1,3 31:9,11 70:12 comes 20:1 32:23 coming 5:3 11:2 15:14 20:16 22:9 comment 11:13 38:14,19 39:6,15 Commission 32:15,19 72:12 common 1:1 9:13 10:6 52:19 57:23 64:22 commonly 32:8,9 communicate 49:1 community 7:24 comp 18:19 19:7 32:12,18 companies 28:21 Company 29:3,6,12 Compensation 32:8 compiled 37:24 complete 18:1,6 50:13,16 64:3 69:13 completely 55:8 complied 39:23 compromise 46:10 concept 69:7 concerning 4:15 29:2 conclusion 70:13 condition 38:25 54:7 conducted 15:18 confidential 41:11,14 confirm 37:8 58:9 connection 7:4 Conomy 33:5 35:18 46:15 59:15,20 60:4 63:12 Conomy's 59:13 62:15 63:25 68:12 consciousness 64:14 consecutively 41:19 consented 37:9 consideration 52:21 considered 61:8,9 65:6 consistent 16:12 consists 7:18 consulted 37:2 contained 33:18 contains 41:24 contemporaneous 60:23 70:10 contexts 10:1 continue 29:11 continuing 9:24 continuously 62:4 contradict 66:3 contributed 20:21
C		
C 3:1 4:1 68:21 calendar 13:14 27:13 call 5:1 37:19 40:15 called 1:15 4:5 10:12 calling 17:20 20:15 candid 37:11 candidly 19:24 captioned 37:10 cardiovascular 54:10 care 37:12 38:15,21 39:7,16,24 40:19 56:2 caregivers 47:12 caring 47:13 carotid 62:21 63:4 carotids 51:7,15 case 1:6 4:18 6:21 7:5,13 12:16,20 13:18,18,24,25 14:1,5,6,15,21,23 15:2,5,6,17,21 16:18 19:20,20 20:19 21:2,3,7,10,15,22,23 22:3,5 22:12,17,19,20 27:6,9 33:1 35:11 36:8,23 41:16 42:1 47:3 55:7,16 56:13 66:2,8,13 68:6 69:22 70:1 70:6 cases 14:11 16:7,13 17:1,4,7 18:11 20:9,24 22:25 23:7 24:5,9,11,14		

<p> contributing 56:21 conversation 39:11 copies 35:17 copy 1:20 5:14,17 40:3 41:5 coronary 64:9 corporation 28:25 correct 5:18 6:23 13:7 16:4 17:15 18:7 22:8,8 23:2 38:16,23 39:8,9 39:18,25 44:2 45:7,12 46:13,15 51:6 55:7 56:17,18 57:2,4,15 58:19,20 59:2 63:10,17,22 64:12 65:3 68:2,6 69:8 correction 49:18,19 correctly 38:22 correlate 59:5 correspondence 36:3,7 37:7,8 40:25 Cosgrove 1:5 counsel 1:16 3:2 4:5,8 counting 9:6 COUNTY 1:2 couple 10:1 25:14 coupled 66:9,14 course 9:7 27:23 35:4 62:11 70:24 court 1:1 13:9,10 17:13 41:4,17 71:23 Courtyard 2:14 cover 38:2 41:1 covered 70:23 co-defendants 4:22 cranial 34:1 CRR 1:23 CT 34:2 35:17 37:22 38:3,9,9 49:12 50:10 58:15,17,20,23 CTA 51:18 58:14 curious 28:16 current 26:21 40:5,6,9 currently 8:9 16:25 CV 5:13,15,20,24 40:3,6,9 CVA 53:23 64:17 65:20 </p>	<p> debate 53:7 decedent 37:16 December 13:16 14:8 15:1,6 defect 58:25 66:10,15,23 67:24 defendant 2:11 22:17 Defendants 1:10 defense 15:5 16:9,11,16,17,20,24 17:7 18:24,25 19:5,15 25:22 27:6 31:24 32:1 defer 55:4,13 definition 53:22 degree 12:13 50:20,24 52:5,6 54:13 54:17 58:2 delay 10:18,24,25 delayed 11:2 delivery 71:20 demonstrate 59:6 Depending 49:17 54:24 deposed 14:10 15:16 24:10,14 66:7 66:12 deposition 1:14 4:25 13:6,13,15,17 13:21,23 14:1 15:12,13,17 16:3 17:15 18:12 20:9 21:10,13,16,21 21:25 22:5,8 23:19 31:4 36:10,12 40:22,24 41:5,15 44:21 59:13 68:13,19 69:5 70:25 72:2 depositions 14:6,7 17:18 19:12 29:4 35:18,23 36:13,20 46:25 47:3 deps 45:21 desk 22:10 despite 48:25 details 12:15 13:24 23:22 Detroit 22:21 developed 64:8 development 45:2 68:10 diagnosed 11:18 diagram 68:21 die 44:10 died 22:15 30:4 55:9 57:4 difference 63:24 different 23:17 29:17 70:13 difficult 43:10 digit 42:16,21 digits 42:25 dilated 49:9 diminished 58:1,3 direct 45:6 54:4 direction 1:24 directly 28:8 Dirk 25:8 disability 54:17 disagree 46:1,12 56:12,16,25 59:20 59:21 60:10,12 63:13 66:17 disciplinary 26:9 </p>	<p> disclosure 17:14 discovery 15:16 discuss 55:11 discussed 67:4 discussion 66:5 68:18 disease 8:20 12:2 39:12 42:18 43:3 43:7,14,17 44:2,12 50:17 51:11 51:15 52:12 57:18,22 60:6 61:15 62:23 63:4,10,20 64:1 distribution 38:4 50:8 51:11,22 53:8,14 54:1 59:6 64:4 68:17 District 1:19 dive 12:19 Doctor 4:24 5:5 6:10 10:18 11:17 20:18 31:1 32:25 34:7 35:13 38:13 40:2 41:20 47:23 60:1 62:15 70:15 71:7,16 doctors 30:13,19 36:19 39:23 46:19 56:12 doing 11:6 16:13 18:15 19:11 32:22 62:2 Doolittle 25:16 door 19:1 doppler 51:5,7 downtown 7:23 31:9 dozen 14:13 16:1,6 17:4 24:7,9,14 Dr 1:14 3:3,10,12,14,16 4:3,13 30:1 30:15 33:17 35:20,21,23,24 37:10 37:15 38:16,20 39:17,17,23,23 45:18,18,23 46:4,5,14,15,15 56:7 56:11 57:1 59:13,15,20 60:4 62:15 63:12,25 68:12 dramatically 42:5 drawn 69:5 drew 68:17 drinking 10:21 driving 7:23 drop 65:22 dropped 65:8 Drs 33:5 35:18 drugs 49:10 62:11 due 58:1,3 61:19 duly 1:17 4:6 D.C 1:12,20 4:5 5:7 7:24 26:19 D.O 1:8 </p>
<hr/> <div>D</div> <hr/>		
<p> D 4:1 68:19 dad 28:24 30:15 date 48:7 dated 5:5 30:5 48:2 day 31:13 72:7 days 68:14 day-to-day 7:17 deal 41:7 deals 6:15,17 dealt 60:16 Dean 39:17,23 46:5 death 37:18 43:11,14 53:19 55:15 55:21 56:8,13,17,22 57:1 58:9 </p>	<p> debate 53:7 decedent 37:16 December 13:16 14:8 15:1,6 defect 58:25 66:10,15,23 67:24 defendant 2:11 22:17 Defendants 1:10 defense 15:5 16:9,11,16,17,20,24 17:7 18:24,25 19:5,15 25:22 27:6 31:24 32:1 defer 55:4,13 definition 53:22 degree 12:13 50:20,24 52:5,6 54:13 54:17 58:2 delay 10:18,24,25 delayed 11:2 delivery 71:20 demonstrate 59:6 Depending 49:17 54:24 deposed 14:10 15:16 24:10,14 66:7 66:12 deposition 1:14 4:25 13:6,13,15,17 13:21,23 14:1 15:12,13,17 16:3 17:15 18:12 20:9 21:10,13,16,21 21:25 22:5,8 23:19 31:4 36:10,12 40:22,24 41:5,15 44:21 59:13 68:13,19 69:5 70:25 72:2 depositions 14:6,7 17:18 19:12 29:4 35:18,23 36:13,20 46:25 47:3 deps 45:21 desk 22:10 despite 48:25 details 12:15 13:24 23:22 Detroit 22:21 developed 64:8 development 45:2 68:10 diagnosed 11:18 diagram 68:21 die 44:10 died 22:15 30:4 55:9 57:4 difference 63:24 different 23:17 29:17 70:13 difficult 43:10 digit 42:16,21 digits 42:25 dilated 49:9 diminished 58:1,3 direct 45:6 54:4 direction 1:24 directly 28:8 Dirk 25:8 disability 54:17 disagree 46:1,12 56:12,16,25 59:20 59:21 60:10,12 63:13 66:17 disciplinary 26:9 </p>	<p> disclosure 17:14 discovery 15:16 discuss 55:11 discussed 67:4 discussion 66:5 68:18 disease 8:20 12:2 39:12 42:18 43:3 43:7,14,17 44:2,12 50:17 51:11 51:15 52:12 57:18,22 60:6 61:15 62:23 63:4,10,20 64:1 distribution 38:4 50:8 51:11,22 53:8,14 54:1 59:6 64:</p>

51:18 64:19 else's 47:8 email 71:22,23 embolic 53:21,23 64:19 embolism 12:9 20:19,20 37:17 42:9 44:22 45:2,10 46:20 47:6,16 52:20 53:10 54:5,6 55:7,9 56:10 56:21 57:7 61:17 62:16 employer's 32:15 enter 28:23 entire 31:12 53:25 54:1 entirely 56:25 entitled 52:12 entries 34:6 envision 6:18 episode 57:22,25 65:20 68:9 episodes 57:19 67:7 escapes 25:24 ESQ 2:4,12,19 essentially 46:19,23 47:15 estimate 27:25 et 1:5,9 evaluate 8:17 19:2 evaluation 10:3 29:17 32:21 evaluations 18:19 event 43:17 44:8 49:5,22 52:7 53:4 53:21,23 58:10,18 64:17,24 65:1 65:3,7 67:24 events 42:10 70:10 evidence 50:1 53:2 64:15 exactly 31:17 50:9 71:7 exam 18:23,24,24 examination 1:15 3:2 4:8 examinations 18:21 examine 32:14 examined 4:7 example 29:3 52:4 61:21 exams 31:23 32:5,12 exception 18:25 exhibit 3:9 41:18 68:19,21 71:24 exhibits 40:25 68:16 expect 65:19,21 expectancy 42:4,8,20 70:17 71:2 expenses 31:14,19 33:17 experience 12:10,17 experienced 46:22 expert 11:15 16:8,9 22:16,18 25:13 27:5 30:19,24 35:8 46:4 55:4 expertise 38:25 39:4,12 54:22 experts 46:23 66:7,12 70:5 expires 72:12 explanation 69:2,4 expressed 4:15 33:8 70:17 extent 51:10 71:9 extra 31:8,9	extremely 11:2 <hr/> F <hr/> fact 8:16 58:16 68:1,3 factor 56:21 failed 34:8 37:15 failure 56:9,20 fair 71:13 fairly 16:12 63:3 fairness 39:5 family 9:19 far 8:10 28:5 35:6 63:22 fare 31:15,22 father 29:23 30:10 faulting 23:16 February 42:11 44:24 45:25 51:12 62:24 federal 13:9 17:13 feel 44:1 feeling 39:9,15 feels 10:2 Feiger 22:21 fella 26:1 figuratively 11:11 file 21:9 22:9,23 24:16 36:1,7 filed 13:25 films 35:16 38:3 find 33:21,23 34:2 48:5,13 fine 28:25 41:20 51:16 57:9 60:2 71:20 firm 22:21 23:1 24:2,6,22 25:2,5,15 26:4 27:8 34:12,15 35:2 firms 24:18 25:21 first 12:6,16 15:10 30:2 31:6 37:1,2 55:22 63:16 fit 70:11 fits 69:23 five 4:20 19:3,25 flipping 38:7 flow 52:5 58:1 66:10,15,23 68:18 69:18 70:13 focused 39:3 56:5 follow 8:12,25 following 54:19 follows 4:7 forget 40:17 forth 5:21 forward 40:8 forwarded 33:4 37:18 found 49:8 foundation 47:14 four 9:4 19:3 26:16 40:11 framework 44:20 Frank 37:11 frequent 9:16 10:4	front 5:6,20 6:22 12:18 31:8 32:25 33:11 41:1,16 further 71:8,12 fusion 15:23 future 43:6 44:19 <hr/> G <hr/> G 4:1 Gaffney 3:12,14,16 gamut 19:8,13 general 33:15 48:11 67:20 69:21 generated 19:11 gentleman's 22:22 George 8:2 30:2 geriatricians 9:18 getting 48:15 54:21 Ginella 56:4,11 57:1 Ginella's 56:7 give 14:6 17:4 21:18 22:23 23:13 29:15 34:19 41:17 given 5:14 13:6,13 16:3 17:18 29:4 69:4 giving 27:25 51:10 glad 7:19 go 11:13 13:23 20:12 28:9,10,11 31:6 34:5 37:6 46:17 47:22 48:1 48:16 54:20 59:7 goes 28:24 42:2 going 4:14,23 5:15 6:8 7:25 32:23 44:18 51:14,17 53:11 59:19 71:16 good 42:22 43:21 49:14 51:16 52:18 63:5,5,6 Gorge 4:12 gosh 9:5 gotten 12:8 18:13 54:11 55:13 69:15,17 graciously 37:9 graph 69:3 graphic 65:21,21 graphics 61:1 greater 16:17,17 18:20 57:18 Groedel 23:25 guess 16:22 32:23,24 37:20 51:25 51:25 guessing 16:22 24:16 guesstimate 14:12 16:10 17:3 19:17 24:7 27:19 32:3 guys 11:8 G-O-R-G-E 4:12 <hr/> H <hr/> H 3:8 half 23:23 24:7,9,14 half-hour 31:9
---	---	---

<p>hand 6:18 handed 40:2 handwritten 37:23 48:10 happen 44:11,18,18 67:5 happened 45:10,13,14 60:9 64:5 67:5 69:19 hard 12:3 60:14 Harvey 29:22 hate 24:17 head 9:21 38:3 hear 25:6 heater 12:23 heaters 12:25 help 25:18 41:10 47:19 51:17 helps 13:2 37:3 hemodynamic 46:10 54:13 hemodynamically 50:25 hemorrhaged 22:15 herniation 57:5 Herwig 35:20,23 45:18 higher 16:16 52:5 highlighting 34:6 38:11 history 61:23 hold 7:5,10,12 11:14 20:12 holiday 15:14 home 45:13 hook 30:19 hope 36:5 hopefully 59:21 hospital 7:23,24 8:3 12:8 33:13 40:13 43:5,20 44:10,14,16,24 45:9,14 50:21 51:21 53:3 56:2 61:17 63:15 hospitalization 43:15 47:7,14 hospitalized 62:17 hospitals 33:13 hotel 31:15,21 hour 31:3,6,7,8 61:9 hours 49:22 Howard 2:4 4:13 hypertension 61:23 hypotension 12:13 45:24 46:21 57:10,15 59:1 60:8,16,17 61:10 61:11,13,14,18 62:17,19 65:5,24 66:9,14,21 67:2,21 69:25 hypotensive 46:21 49:2 54:14 57:19,21,25 61:22 65:20 67:7,9 68:9 hypothetically 43:19 44:17</p>	<p>immediately 58:8 62:13 impact 45:6 64:6 68:8 impacting 63:21 impolite 10:24 important 41:7 63:14 improperly 15:24 improved 60:17 inability 66:2 inaccurate 57:4 inadequate 61:19 65:2 69:24 included 29:8 56:12 including 18:18 27:15 66:2 income 19:10 27:14 29:2,11 incomplete 56:15,18 57:2 incorrect 70:1,4,7 independent 18:24 29:7 57:13 indicate 4:20 58:17 indicated 16:2 17:12 33:3 66:13 indicates 60:5 indication 51:10 indications 8:16 indicative 58:24 indisposed 5:3 individual 27:12 69:8 individually 41:18 46:18 individuals 25:21 individual's 25:25 Industrial 32:15 infarct 38:4 46:6,9 53:8 59:12 69:14 information 35:14 infrequent 14:6 infrequently 10:4 injuries 54:8 injury 54:3 instant 72:2 instantaneously 65:22 instantly 65:15 insurance 28:21 29:3,6,12 intend 39:21 70:20 intentionally 10:23 11:6 internist 39:2 internists 9:19 internist/family 9:14 interpretation 64:14 intervention 9:9 11:19,22 intracranial 63:4 intubated 48:18 49:6,7 50:14 53:15 53:17 59:9 62:10 67:11,13 intubation 48:24 49:13,16,20,23 50:18 54:15 62:10 67:15,17 68:9 involve 8:24 26:22 31:12 involved 5:21 21:4 26:1 35:8 56:1 involves 8:7 involving 20:19</p>	<p>ischemia 59:1 ischemic 57:17,22 58:5,11,19 61:15 issue 7:9 20:20 29:1 39:22 42:3 51:19 55:10 61:23 69:4 issues 6:18 8:13,16,25 26:23 42:6 i.e 69:15</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J 2:19 James 29:25 January 1:13,21 42:10 51:5 62:22 62:24 Jean 37:16 45:23 54:4 journal 6:4 7:7 Judge 1:5 Judith 15:11 Judy 15:9,11 July 37:4 38:14 41:2</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>K 1:20 KAREN 1:4 keep 23:14 28:11,17,19 kids 7:20,21 Kilbane 23:5,8 kind 32:23 34:3 40:8 Kinko's 1:19 know 6:24 7:16,17 9:13 13:16 14:8 17:19,25 18:2 19:23 20:2,7,7 21:17 22:1,4 23:7 24:25 25:4,4,7 25:25,25 27:4,10,13 28:2 29:1 35:1,5 36:1 40:23 42:17 43:2,7 48:2,12 53:13 55:20,20,23 56:6 59:15 62:3 63:13 64:7,8,23 69:14 knowing 51:2 52:2,3,17 64:11 knowledge 20:19 21:3 knows 28:23 Kuri 2:12 5:14 11:1 12:23 13:1,3 20:15,25 30:5 35:14 36:4,22 38:13 39:6 40:2,9,19,24 41:3,20 54:20 63:1 71:11,16,19,22 Kuri's 37:3 40:16 K-1s 28:4</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>L 1:4,18,22 lack 55:12 lady 15:8 large 38:4 late 53:20 law 24:18 27:8 35:2 lawyer 19:15,16 22:20 34:17 lawyers 19:5,6 23:1 24:20 30:19 32:10,18 Leader 2:21</p>
<hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 21:22 24:12 28:7 identification 71:25 ill 61:16 62:17 immediate 66:2</p>		

leading 58:12 61:18 64:17 65:20 66:23 leads 12:13 leave 30:12 leaving 27:21 led 42:18 65:24 left 38:4 39:1 43:4 44:13 46:6,9 48:7 50:8,11 51:12,22 53:8,14 58:21 59:6 64:4 66:16 68:17,22 69:19 legal 12:17 18:16,17 27:14 28:5 letter 3:10,12,14,16 7:4 30:5 33:3 37:3 38:2,13,14 41:2,2 letterhead 30:11 letters 36:7 37:1 41:1,10 level 62:13 levels 61:25 69:17 life 42:4,7,20 44:6 63:21 70:17 71:2 likelihood 43:6 limitations 54:25 55:12 list 9:21 17:17 18:1,6,11 23:14 40:13 56:12 literally 11:12 literature 7:3 36:22 little 7:21 10:18 12:3 24:17 54:21 lived 42:23 43:1 local 26:9 53:4,6 localized 52:22 65:13 locally 64:10 long 22:14 30:7 50:12 62:3 67:6,15 longer 16:18 42:23,25 longevity 39:2 long-term 55:11 look 8:14 17:4,11 34:5 37:2 47:20 51:16,16 63:4 68:16 looked 22:14 61:5,6 68:14,15 looking 35:25 37:25 59:4,10 looks 33:10 54:10 lose 65:15,17 loss 69:13 lost 48:24 lot 62:11 lots 12:6,6,6 33:20 low 49:9 69:16 lower 52:6 53:16 lowest 69:18 lull 58:3 lumen 64:2 lumping 27:19	majority 9:8 19:5 makeup 25:5 malpractice 14:2,3,5,6,11,15 15:2 16:2,7,13 17:1 18:16 19:11,20 21:22 22:3,5 26:13 manage 9:25 management 8:7,10,25 40:12 manifest 66:1 manipulate 13:1 March 4:18 30:10 mark 23:25 40:25 41:4 marked 71:25 Martin 35:21,24 45:18,23 46:4 massive 46:5,8 49:12 53:7 57:4 material 32:25 33:6 matter 1:16 6:21 13:18 14:23 15:21 21:6 22:12 35:10 37:10 70:21 matters 16:2 MCA 38:4 39:1 44:13 50:11 53:9 53:14,18 59:6 69:19 meals 31:16 mean 13:24 27:7 34:4 41:11,13 60:25 61:7,11,12,20 means 50:25 meant 31:18 mechanism 57:23 medical 6:21 12:17 13:18 14:11,14 14:22 15:1,20 16:1,6,13 17:1 18:15,16,17,24,24 19:11,20 21:6 26:9,13 27:14 28:5 29:20 31:2 33:4,11,14,16,17 36:18,21 37:18 45:15 47:10,12 48:11 59:5 60:23 medication 54:15 medicine 11:15 Memorial 40:13 memory 6:24 mental 23:14 mentioned 28:16 52:18 71:3 met 59:17 Mexico 4:4 5:7 microneurosurgical 6:7 middle 42:19 43:4 46:6,9 50:8 51:12,15,23 52:21 54:1 58:21 63:7 64:4 66:16 68:22 mild 61:11,12,14 mill 53:18 mind 20:1 37:5 45:1 minute 71:3 minutes 4:20,25 Mishkind 2:4,5 3:4 4:9,13 11:4,10 12:24 13:5 20:15,17 27:2 40:20 41:22 55:3 63:8 66:6 71:20 missed 38:10 model 69:9 moment 55:18	Monday 1:13,21 month 22:9,10 morbidity 54:17 55:5 morning 7:22,25 49:22 mortality 55:6 motion 11:5,9 move 41:6 moving 11:4 MRA 51:18 58:13 Murphy 2:19,20 4:21 20:16 34:7,9 34:15,20 71:14,15
N		
N 3:1,1 4:1 name 4:10,13 14:18 15:8,10 21:8 22:22 23:13 24:16,25 25:6,8,15 25:25 27:6,7,10 30:6,12,18 55:25 names 23:10,15 34:18,19 narrowing 63:20 nature 19:7 necessarily 65:23 necessary 37:16 need 8:18 21:8 28:12,17,18,23 32:22 59:23,25 63:5 neglectful 40:17 neurologic 8:19 38:25 57:9 neurological 10:9,13 32:11 neurologist 9:23,24 neurologists 9:17 12:8 neurology 8:14 10:7,10 neuropathies 8:21 neurosurgeon 5:18 7:16 8:18 39:11 neurosurgery 7:20 8:15 neurosurgical 8:18 30:7,14 never 27:1 48:24 51:25 59:17 60:18 64:22 65:18 new 4:4 5:7 9:6 nine 6:2 nonsurgical 8:24 non-neurosurgical 8:13 normal 51:6 59:8 62:21 71:20 normally 31:20 Nos 71:24 Notary 1:18 4:7 72:11 note 37:25 38:1,4,8 47:23 48:6,8,11 48:13,14,22 53:15 62:5,7 67:3 70:9,9,11,12 noted 45:24 notes 33:25 34:4 37:21,23 38:6 48:10 70:2 notice 1:17 noticed 4:23 notify 71:11 number 9:7 35:4 42:15 70:3 numbering 41:18		
M		
M 37:16 magnitude 62:23 main 58:21 maintained 62:13		

numbers 16:15,23 67:12 68:1,3 N.W 1:20 4:4 <hr/> <p style="text-align: center;">O</p> <hr/> O 3:1 4:1 objection 41:9,21 54:20 63:1 obstruction 58:2,4 obtunded 65:17 obviously 10:1 42:4,19 49:12 50:16 52:20 54:13,24 71:8 occasion 24:19 34:9 35:2 occasional 7:20 occasionally 28:14 32:7,20 occasions 25:14 26:15 occlude 53:9 occluded 43:4 50:17 53:25 54:2 58:11 occlusion 50:7,12,13,16,20 51:22 52:8 53:1,5 64:3 68:22 occlusions 52:13 occur 49:5 52:13 occurred 14:3 44:15 46:7,10 49:13 52:7 66:4 67:2,18,22 occurrence 64:17 occurs 52:16 64:9 October 35:16 37:22 38:2 office 5:2,11 7:22 13:21 14:2 15:15 19:2 28:10 30:3 40:15,16 offices 1:19 5:10 Oh 2:8,16,22 13:20 21:24 Ohio 1:2 13:19 okay 5:3,4 11:14 12:20,21 35:1 41:8 47:25 48:16 59:23 old 9:6 12:25 17:18 once 25:19 32:23 ones 16:3 31:20 32:19 52:24 61:6 one's 42:20 one-sentence 38:3 one-time 18:23 ongoing 12:5 open 19:1 21:3 operate 7:21 8:1,4 9:4 32:20 operated 9:3 27:15 opined 46:19 66:8,13 opinion 10:5,5 37:11 42:7,13 45:11 47:4,9,15 51:20 52:8 54:4,16 56:7,16 57:7 63:24 66:18,22 67:21 68:8 69:25 70:15,16 opinions 4:15,16 7:5,10,12 12:19 19:21 33:8 39:20 41:24 46:14,18 70:6,19,24 71:9,10 opposed 8:25 9:24 options 64:20 oral 10:9 originals 41:6	orthopedic 9:15 orthopedist 9:20 outcome 43:22 overlap 11:7 o'clock 49:18 60:3 <hr/> <p style="text-align: center;">P</p> <hr/> P 4:1 page 3:9 47:22,22 48:1,2,16,17 pages 33:19,20 40:11 paid 29:5 pain 40:12 pardon 47:20 part 4:18 8:14 12:5 42:10 48:11 partial 18:1,6 particular 9:11 partners 34:10 party 26:12 passed 29:24 30:1,10 pathophysiological 57:24 58:24 pathophysiology 59:11 patient 6:14 8:23 9:23,25 10:2 11:18,23 12:10 15:22 18:22 19:22 22:1,2,14 26:24 32:10,13 32:13,14,22 46:20,22 47:6,13 48:15,17,22,25 49:2,6,7 50:2 54:3 57:4,17,21 59:1 61:3,14,16,16,22 62:1,4,17 64:6 65:8,15,25 69:8,12 69:13 patients 8:8,12,15,17,19 9:3,5,6,6,8 9:10 11:21,24 12:1,2,7 19:2,4,13 27:15,16,17,17,18,21 29:8,12,14 29:17,19 31:23 32:17 52:13,14 54:23 69:10 patient's 20:11 21:8 56:21 58:12 61:1 63:21 65:5 Patrick 1:8 2:11,19 37:10 38:16 39:17,23 71:14 pause 11:5 pay 29:20 31:20 payments 29:8,12 PE 42:23 54:19 55:13 57:11 62:16 62:19 64:6 peer 6:9 people 47:12 percent 8:10,11 12:1 16:17,20 27:22 28:1,1,1 51:1,21 percentage 8:6,23 11:23 17:6 19:10 percentish 19:17 27:20 perform 18:21 37:16 perfusion 53:13 period 60:17 61:8 62:3 63:25 64:24 65:25 67:3 personal 41:11,14 PEs 54:23	Phil 68:23 PHILLIP 2:12 physician 55:21,25 physicians 9:20 picture 11:1 PICU 48:9 PICU-4 48:6 pile 28:21 place 33:22 53:21 placed 33:23 places 8:5 28:22 plaintiff 1:16 4:6 15:5,6 16:16,20 17:6 22:17,18 37:14 plaintiffs 1:6 2:3 3:3 4:8 19:6 32:9 plaintiff's 15:7 16:8,11 17:10 22:20 planning 5:3 plaque 52:15,24 58:10 64:1 plate 15:23,24 PLEAS 1:1 please 4:10 7:18 34:19 41:10 pleased 14:24 40:18 pleasure 34:14 plus 31:14 point 4:22 5:1 17:19 22:12 43:22 50:2 53:3 63:16 64:16 65:10 67:12 policy 19:1 Polito 2:20 34:11,20 population 8:24 11:24 portion 31:21 48:3,4 positive 15:19 23:23 possible 52:22 53:10 practice 7:16,17,19 8:6 9:19 12:5 29:16 31:13 practiced 29:23 practitioners 9:14 precipitate 12:9 49:4 65:7 67:24 precipitated 45:25 46:22 precipitating 43:16 62:16 preliminaries 4:24 prepare 17:14 prepared 17:25 18:10 69:3 preparing 7:3 pressure 48:18,21,23,25 49:8,10,14 49:15,18,24 50:18 53:16 59:9 61:2,7 62:12 64:15,25 65:9,11,22 66:25 67:11,14 69:10,15 pressures 61:1 68:5 presume 17:13 31:12 33:1 pretty 13:15 17:9 23:21 27:22 49:14 51:16 previous 26:22 pre-existing 57:17,22 58:11,18 66:16 prior 13:14 16:15 38:8 48:24 50:3
---	---	--

50:21 51:12,20 54:11,12 58:8 62:4,9 63:15,19 67:7,22 68:9 privileges 26:5 probably 6:24 9:3,5,5,12,15,20 10:5 11:25 14:12 16:10,18,21 17:3,9,17 18:19 19:2,4 24:15 27:20 32:3,9 50:19,22 51:1 52:1 56:23 67:19 68:11 problem 11:8 12:4 61:21 problems 8:20 69:11 proceedings 1:22 process 51:11 62:23 63:20 professional 57:7 professionals 9:17 profusion 58:25 61:19 65:2 67:24 69:16,24 prognosis 39:13 progress 47:23 48:6 Progressively 48:15 properly 37:15 provide 30:18,24 39:21 70:20 provided 20:10 36:21 38:15,20 39:7,16 54:6 70:6 providing 4:17 12:20 19:21 41:25 proximal 50:11 51:22 Public 1:18 4:7 72:11 publications 5:21 6:3 40:3,4,14 pull 55:18 pulmonary 11:15 12:9,12 20:19,20 37:17 42:9 44:22 45:2,9 46:4,11 46:20 47:5,16 54:5,6,10,25 55:4,6 55:9 56:9,19,20 57:6 61:17 62:16 pulmonologist 39:3 54:23 55:11 pulse 48:23,25 pupils 49:9 purposes 18:22 41:14 pursuant 1:17 put 6:20 15:24,24 41:18 putting 38:12 p.m 1:21 72:1	read 37:1 45:17 46:24 56:3 59:13 62:5 64:13 70:9 71:17 reading 37:5 38:21 70:12 real 43:5,21 61:23 reality 30:10 really 7:21 11:3 19:8 23:14 28:15 29:18 42:5 62:25 reason 51:3 60:8 reasonably 55:1 reasons 66:20 67:10 recall 13:21,22,23 14:4,8,16,16,17 15:3 21:8,11,12,13,17,18 22:22 23:22 24:23 25:22 27:12 29:9 35:10,25 36:1 45:20,22 61:6 receive 29:11 received 28:4 29:2 35:14,15,17 36:10 Recess 20:14 recognize 55:25 recollect 23:15 recollection 19:25 20:4,6 24:4 record 4:11,20 47:21 53:3 62:6 64:13,16 66:4,5 records 31:2 33:4,11,14,15,16,21 33:23 36:18 37:18 38:24 45:15 47:10,19 56:24 59:5 60:23 66:3 recovered 54:18 recurrent 46:11 refer 9:23 47:18 62:7 referenced 25:23 referred 9:11 18:23 regard 20:8 37:12 55:5 regional 66:11,15 regular 71:22 regulation 68:19 69:3,7,13 Reimensneider 25:8,12 relate 18:6 related 67:2 relates 33:1 39:21 70:15 relating 36:8 38:19 relationship 45:1 47:5 relevant 7:8 36:23 rely 69:6 70:9 relying 60:22 62:8 remember 14:18,20,22 15:20 22:11 22:13 23:4,10,18 27:5,7,8 34:17 Reminger 2:13,13 23:1,1,11,11,20 23:20 24:6,6,21,21 41:15,15 removed 36:6 rendered 37:12 repeating 60:11,15 rephrase 46:8 report 4:16 5:5 19:19 33:8 35:13 38:18,22 41:23 47:8 reporter 41:4,17 71:23	reports 33:5 35:20 36:2,20 45:19 45:20 47:3 represents 4:21 request 14:19 23:20 27:1 37:11 require 8:21 9:8 10:2 11:19,22 required 15:25 17:13 54:14 resolved 66:22 67:23 respiratory 56:9,20 responsibility 40:17 result 42:4 54:4 resultant 66:10,15 resulted 37:17 results 58:4 retired 30:3 return 41:6 review 16:13 17:2 30:20 31:2 34:9 35:2 37:9 68:13 reviewed 6:9 7:2 17:7 20:24 23:7 24:5,10 33:7 38:23 60:25 68:12 70:6 reviews 19:12 revision 15:23 revoked 26:6 rheumatologists 9:18 Rich 1:8 2:11 33:17 37:11,15 38:16 38:20 39:17,23,23 46:5 Rich's 39:17 right 5:15 7:2 11:3 12:19 15:14 18:5 40:21 59:8 66:25 68:25 71:19 ring 25:10 risk 57:18 road 43:22 44:6 rockiest 57:10 role 38:24 rounds 7:25 RPR 1:23 rule 17:14 37:17 run 53:18 runs 19:8
<hr/> <p style="text-align: center;">Q</p> <hr/> quality 63:21 quasi-related 6:16 question 19:23 20:2 41:10 43:24 56:4 questions 4:14,19 5:16 44:21 71:8 71:12,14 quite 19:24 42:5		<hr/> <p style="text-align: center;">S</p> <hr/> S 3:1,8 4:1 sat 18:9 satisfied 53:22 save 28:23 saw 10:20 12:6 22:9 45:21 58:15 says 28:12,17,23 38:4,8,9 48:6,7,7 48:22 55:8 57:1 60:23 62:8 68:23 scan 50:10 58:15 59:4,11 scenario 44:14 scheduled 21:20 22:4 scientific 53:2 64:15 sclerotic 44:12 searching 5:14
<hr/> <p style="text-align: center;">R</p> <hr/> R 4:1 radical 28:2 range 52:1 rare 62:19		

<p>second 9:18 10:4 20:12 31:7 secondary 56:9,20 Security 19:6,15 32:5,7 see 5:2 7:20 8:12 9:3,8 11:21,24 12:1,2 13:2 19:4,5,6,7 20:16 22:23 28:14 29:13,17 32:7,17 36:1 47:12 58:16 seeing 9:5 12:4 19:13 32:13 seen 9:7 27:10 35:20,23 46:14 47:2 55:15 seizures 8:20 send 32:10 38:9 sense 12:17 16:14,15 24:15 29:15 69:22 sent 18:22 31:24 32:14,18 38:2 separate 12:4 serve 37:8 services 8:19 29:20 30:19,24 serving 14:19 16:8,9 22:16 set 4:18 5:20 setting 30:4 seven 43:8 severe 45:24 57:19,21 60:7,9 61:23 severity 54:24 shade 17:10 share 14:24 sheet 70:14 short 59:23 show 58:20 showed 49:12 shown 4:22 5:1 58:23 Sibley 7:23 40:12 side 16:24 17:10 25:22 32:15 sides 66:8 signature 56:3 71:21 72:5 signed 55:21 significance 51:9 62:21 significant 43:3 50:3,24 63:3 simply 6:20 29:19 single 42:16,21,25 sir 5:12,19 7:6,14 10:8,17,23 11:16 13:8 16:5 17:24 22:7 23:3 26:7 26:11,14,15,25 29:10 30:21,25 33:2,12 36:15,24 38:17 40:1 44:3 45:4 46:3 47:1,24 48:20 51:8 55:19 59:14,16,18 61:13 63:11 65:4,23 69:1 71:18 site 50:17 sitting 52:14 situation 62:18 skipped 70:12 sleep 65:16 sleeping 52:13 slow 11:4,9 small 52:15</p>	<p>Social 19:6,15 32:5,7 solely 47:9 solo 30:7,9 somebody 47:8 55:8,10 61:20 somewhat 49:2 son 39:17 soon 49:8 sorry 15:10 33:22 35:17 36:12 46:7 sort 10:4 18:19 21:17 24:16 South 2:15 speak 47:8 65:16 66:3 70:8 speaking 68:4 71:15 specific 29:15 34:4,6 42:24 51:3 63:6 specifically 6:17 21:19 61:6 69:7 specifics 24:23 55:5 speculative 50:23 51:24 speech 59:8 65:17 Speicher 19:20 33:1 37:16 38:21 39:25 54:4 56:2 Speicher's 12:16 45:24 58:9 60:5 66:8 spend 7:21 8:2,5 spite 53:16 Sprite 10:21 Square 2:14 stabilization 67:11 stabilized 57:8,11 66:25 67:7 staff 12:8 stamped 47:19 standard 39:24 standpoint 41:12 57:24 58:25 65:21 start 4:23 48:14 66:11 starting 41:2 state 4:10 13:10 14:3 26:9 stated 57:2,3 66:17 statement 46:2 47:11 60:10,19,20 62:16 63:17 statements 59:20 status 32:22 57:9 stenosis 52:6 63:14,19 66:16 stenotic 60:5 63:9 Stenotype 1:22 stickers 41:18 sticky 34:2 37:22 stop 63:16 straightened 54:11 strange 11:3 Street 1:20 2:6,15 stress 54:9 strike 66:11 stroke 6:13 8:7 11:18,24 12:7 19:22 20:11 26:23 39:1 42:9,17,23 43:20,25 44:5 45:3,11,16 46:22</p>	<p>47:6,15 49:4,12,21,23 50:3 52:9 52:16 53:17 54:12,18 57:5,12,15 57:19,23 58:8,12,19 60:18 61:19 62:5,12 65:6,9,11,24 66:1,9,13,24 67:8,16,18,22,25 70:7,16,18 strokes 11:21 12:3 studies 51:2,4 52:1 58:7 study 52:4,19 stuff 28:21 subject 6:21 13:18 14:22 15:20 21:6 22:12 26:8 35:10 SUBSCRIBED 72:7 subsequent 48:2 49:13 subsequently 15:25 subspecialist 9:11 subspecialties 10:16 substantiates 50:2 suddenly 52:25 suffer 45:10 54:4 67:16 suffered 39:1 42:8 47:6 54:18 70:18 suffering 44:5 sufficient 61:15 67:25 Suite 2:7 summaries 36:11,12,13,18 Summit 1:2 2:15 superimposed 58:18 Suppa 27:6 support 7:9,12 47:4 53:4 64:16 69:18 supports 47:14 sure 11:20 13:15 14:9 20:13 23:21 25:11 27:7,24 50:5 55:19 56:3 57:16 68:20 surgeons 9:15 surgery 8:22 9:1 10:2,9,14 15:25 29:20 40:23 60:2 surgical 8:16,25 10:3 11:19,22 surrounding 26:23 survive 54:23 55:2 survived 42:10,14 SUSAN 1:18,22 suspect 8:9 50:22 suspended 26:6 sustained 60:7 61:7,9 Switzer 2:20 34:10,20,24 35:2 sworn 1:17 4:6 72:7 symposium 40:12 symptomatic 43:17 44:5 50:25 60:6 63:16 65:4 symptoms 66:1 system 54:10 systemic 60:7 61:18 66:9,14 69:25</p>
---	---	--

T 3:1,1,8 tab 38:12 table 32:16 52:14 tabs 33:19,20,22,24,25 34:6 take 4:24 17:4 39:14 40:16,19 41:25 46:12 55:10 56:11 59:23 66:17 69:4 71:22 taken 1:19,22 21:10,13 44:5 talk 12:15 49:1 talked 37:19 56:24 67:1 68:5 70:3 71:2 talking 10:19 32:19 48:23 49:5 50:15 60:18,24 61:12 62:1,4,9 64:23 69:20 talks 48:17,18 tangentially 42:3 teach 8:4 tell 5:24 7:15 8:7 14:21 16:6 17:6 23:13 24:4,13 25:1 28:11 30:11 31:1 33:13 37:1 52:4,6 59:3,10 59:11,21 60:12 63:22 ten 20:1 tend 25:4 55:1 terms 6:13 17:14 25:5 34:18 39:15 42:25 51:9 53:21 56:1,13 62:22 64:14 69:2 70:17 test 68:6 69:9 testified 4:7 13:9 15:2 17:12 18:11 20:18 21:14 23:19 27:16 45:23 46:5,24 testify 21:12,20 22:5 26:2 testifying 15:4 27:5 testimony 13:6,13 16:3,21 17:15 19:12 20:8,10 21:18 31:5 45:18 47:2,9 testing 37:17 text 6:7 Thank 25:17 34:12 55:24 71:13 theory 69:21,24 70:10 thereof 48:3,4 55:12 thick 5:24 thing 10:21 18:19 20:8 32:24 34:3 39:14 43:13 44:9 45:13 58:15 things 8:20,21 18:18 19:7 28:14 41:7 59:22 think 6:2,22,23 15:19 20:7 21:24 21:24 22:1 25:5 26:2,3 27:3,3,4 27:24 28:2 29:6,16 34:19 35:3,7 35:19 36:5 42:14,15,21,22 43:18 43:20,22 44:14,18 45:6,12,16 46:3 52:10,22 53:7,17,24 56:14 56:18 57:3,14 60:3,8 63:2 64:21 69:23 70:22 third 10:9 35:3 thought 52:21	three 8:4 9:4 14:12 16:1,6 19:3 26:22 32:3 46:25 thrombosed 64:8 thrombosis 42:19 50:4 52:11,23,25 53:9,12,18 58:4 64:10,21 65:13 68:10 thrombotic 52:16 53:4,25 58:10,18 64:17,19 65:6,7 thrombo-emboli 46:11 Thursday 22:1 time 4:17 7:21 8:2,5 11:17 23:18 26:6 36:25 39:21 40:22 45:15 48:7 49:17 52:13 53:14 54:12,12 57:10 59:9,25 62:3 64:1,5,24 65:25 67:3 70:18 71:10 timed 47:21 timelines 36:17,17 times 9:4,7 11:11 14:10 19:3 70:3 timing 70:10 Tina 27:6 titled 41:10 today 4:14 8:1 13:14 21:21 36:4 told 37:22 tolerate 69:12 Tom 23:4 tomorrow 8:3 top 48:5,16 68:24 topic 6:13 7:11 total 27:20 52:8 Totally 57:6 touch 6:12 touched 42:3 57:14 71:5 toughy 32:17 town 31:21 TPA 48:15 transcribed 1:23 transcript 41:5 71:23 treat 8:15,17 9:24 19:4,8 29:19 32:11,20 treated 11:18 22:2 61:17 64:6 67:10 treating 19:14 39:24 65:10 treatment 6:15 32:11 39:13 45:9 54:5,19 57:10 trial 4:17 13:13 15:12,14 17:15 18:12 20:9 21:14,16 22:6 23:19 39:21 41:25 70:20 71:11 trials 17:18 trigger 43:17 true 42:1 45:16 64:18 try 12:19 13:4 25:18 trying 10:24 13:1 21:17 two 9:16 10:6 14:12 16:1,6 25:23 32:3 34:5 35:3 60:3 64:20 70:22 two-thirds 16:19	type 10:3 17:25 18:17 43:13 52:15 52:18 typical 9:22 53:11 typically 9:4,10 T.A 3:12,14,16 T.M 3:10
U		
ultrasound 51:5 62:22 uncertain 29:6 uncommon 62:18 underlining 34:6 38:11 underlying 44:1 59:1 61:15 62:23 63:14 understand 5:18 28:18 understanding 35:6 44:1 understood 50:5 unequivocal 64:20 University 8:3 30:2 unrelated 6:20 45:10 47:15 57:6 unresponsive 62:11 unusual 31:14,18 53:19 updated 40:10 urging 18:10,10 usual 61:20		
V		
v 1:7 varies 9:12 27:25 variety 9:16 various 54:14 vascular 8:20 12:2,10 20:21 39:12 42:18 43:3,7,14,17 44:2 46:1 52:19 60:6 63:10 64:24 65:1,3 vast 9:8 vastly 29:16 versa 51:16 63:5 versus 9:13 17:7 vessel 53:25 vessels 63:4 vice 51:16 63:5 video 10:19,20 15:13,15,17 Videoconference 1:14 Virginia 15:8 voice 11:2 volume 33:18		
W		
W 2:6 22:23 wait 48:5 wall 64:2 want 12:16 32:10 40:16 71:17,21 Washington 1:12,20 4:5 5:7 7:24 8:2 26:19 30:2,7,14 wasn't 15:15 43:24		

Watts 29:25 30:1,15	\$5,000 31:14	3
way 9:2 23:17 34:3,8 36:7 37:14	\$500 31:6	3 3:14
41:6 47:2 51:2,17 52:3,16 56:5		330 2:17
59:15 64:11	0	3301 4:4
Wednesday 21:25	03 35:17 37:4 38:2 41:2	375-1311 2:17
week 9:4,6 13:16,17,22 14:2,9,14	1	38 49:24
14:23 19:3 21:24,25 22:2 31:25		4
32:4,23 38:9 40:9	1 3:10 41:19 49:18	4 3:4,16 60:3
weeks 11:21	1-4 71:24	44113-1419 2:8
welcome 25:18	10 4:25 8:10,11 12:1,6 16:23 19:17	44114 2:22
went 63:2 67:12	27:20,22 30:16,17 41:19	44308 2:16
we'll 5:1 12:19 59:22 64:22	10/15/03 3:13	47 49:24
whatsoever 45:5	10/29/03 3:15	5
witness 1:15,17 3:2 4:5 11:8 13:4	100 2:21	5th 47:21
41:21 54:21 63:2 71:18 72:5	101/58 49:25	50 9:5 19:3 49:20 62:1,2 69:12
woman 55:9	1099s 28:4	6
wondering 31:18	11 5:6 33:3 38:19 41:24	6th 45:25
word 18:25 34:4 38:10	11th 4:16 7:4 30:6 33:7	60 49:21 61:8,11,24 62:1
worded 43:24	11/4/03 3:17	660 2:7
words 16:17	111/62 49:25	7
wore 49:10	12 1:13,21 28:1	7/28/03 3:11
work 18:16,17 24:19 27:14 28:5	12:30 47:21 48:3,12,14	70 16:19 48:21 49:8,18,20 51:1,21
29:7 37:15 53:6	12:30ish 67:18	52:1 61:21,24
worked 23:11 24:1 25:3,6,12 27:1	12:55 1:21	70s 53:20
30:3	120 49:8,18,20	70-30 16:11,23
workers 32:12	128 48:21	71 3:11,13,15,17
working 23:4 25:22 27:9 34:14	15 4:25 12:6 28:1 30:17	75 49:24
65:10	1660 2:6	75-25 16:23
Workmens 18:18	1988 40:4	77 52:12
Workmen's 19:7 32:8,18	1999 29:5	8
worsening 48:16	2	8 28:1
wouldn't 19:23 28:7	2 3:12 45:25 67:19	80 2:15 16:17 49:19 51:1 52:2 61:8
wrap 59:22	2nd 2:6	61:11,21,24 62:1
write 7:4	2:45 72:1	85 49:20
writes 69:21	20 18:20 60:3	875-2767 2:23
written 6:1,17 7:11 19:25 34:4	20-80 16:11	88 49:24
37:21 48:12	200 2:14	9
wrong 24:2	2000 51:5 62:22,24	90 49:20 69:10
wrote 34:1,2 38:18 41:23	2001 42:11 44:24 51:13 62:24	93 29:24 30:10
X	2002 17:23,24 18:7	
X 1:3,11 3:8	2002-07-4063 1:6	
Y	2003 5:6 18:1,11 27:13 28:6 30:6	
year 13:14 17:4,8,17,23 18:1,7	33:3 38:19 41:24	
23:21,24 27:13,25,25 28:5 35:16	2004 1:13,21 13:12,14 72:8	
40:7	2020 1:20	
yearly 17:2	216 2:9,23	
years 6:7 12:6 16:5,14,23 18:15,20	2340 49:19	
20:1 24:5,8 27:23 28:3,20 30:4	241-2600 2:9	
30:16,17 35:4 42:15 43:9,12 44:6	26 17:14	
\$	2601 34:2	
\$100,000 29:5	28 37:4	
\$300 31:3,7	28th 38:14	
	29 38:2	